Wm Key Esq
Annapolis
Maryland
7 July 1812

Wm Kaye Pond

Chillicothe

Ohio

Nov. 1814.

Sheriffs, Under Sheriffs, Deputy and Bailiffs By Jam. Gibb Esq.

1. 5 Eliz. c. 23. s. 1. 2 Eliz. c. 13. s. 2. 5 Eliz. c. 23. s. 1. 2 Eliz. c. 13. s. 2.

The Sheriff is to be nominated by the Lord Chancellor, Lord Treasurer, Chief Justices of both Benches, Chief Baron of the Exchequer, or any two of them, and presented to the Queen's Majesty in the Exchequer, the morrow after All Souls, and sworn in the Court of Exchequer, the morrow after the Purification of the Blessed Virgin Mary, or within one month after, by himself or his sufficient Deputy, before the Lord Treasurer, Chief Baron, or Justices of Assize, or Justices of Peace, or Custos Rotulorum, or Clerk of the Crown, or Clerk of the Peace, or Custos Brevium of the Common Pleas, or Prothonotaries, or Secondaries of the Common Pleas, or Filazers, or Exigenters, or Clerk of the Exigents, or Clerk of the Outlawries, or Clerk of the Treasurer's Remembrancer, or Clerk of the Pipe, or Clerk of the Estreats, or Clerk of the Nichils, or Clerk of the Pleas, or Clerk of the Common Pleas, or Clerk of the Exchequer, or Clerk of the Crown, or Clerk of the Peace, or Custos Rotulorum, or Clerk of the Outlawries, or Clerk of the Exigents, or Clerk of the Filazers, or Exigenters

Sheriff and Jailor

4 Geo. 3. c. 33
1 Geo. 3. c. 34.

Sheriff: Shall be annually appointed by the Governor and Council

1 Geo. 3. c. 33.

Deputies: Shall be appointed by the Governor and Council upon the nomination of the Sheriff, and shall hold their offices during the pleasure of the Governor and Council.

Sheriff: Shall reside in the County for which he was appointed and not in any other County: Shall not go out of his County upon the penalty of forfeiting his office: Shall not keep a public house or tavern

Com. St. Sec. 2. 35. 36.

Sheriff: Shall have the custody of the Gaol and prisoners therein, and of such Gaol prisoners as shall be committed by any other County

Sheriff: Shall not go from his County without leave of the Governor or Commander in Chief, except in pursuit of criminals, or to attend the Supreme Court, or to execute any process which he shall have received from the Supreme Court

Sheriff: Shall not act as [illegible] or attorney in any cause in the Supreme Court

Sheriff

Sheriff and Jailor

Authority may not be executed by
Deputy - By a late statute of
Connecticut a Sheriff may not appoint a general Deputy without the
approbation of the Court of the County
But he may appoint a Special Deputy
for certain purposes & Should the
Court withdraw the Sanction from the
Act of the Deputy, & the Servant
accept of the Office, it will seem that the
Sheriff may be answerable for the Acts
done by him in his Office Yet whether he
will be so answerable in Case
of Escape, or Rescue in Execution
of Process as Deputy cannot be a
point under the Statute Law of Con-
necticut the Court of Common Pleas
are the Courts of Common Law
under Jurisdiction in Cases arising
in the County of Fairfield & the Superior
Court in Cases arising in the
rest of the State Sheriffs and Constables
are made by the Legislature, but to
be sworn into Public Office
Sheriffs are always Liable to the

Stat Conn. 370

Swift 95-
145-
Kirby 13

Stat Conn. 334

Swift Dig. 65

Penalty

Stat Con
24. 2 12

Sheriffs and Gaolers

and consequently can not delegate
to another. But when it is said that
a Deputy can not delegate his authority
it is not meant that he can not make
an occasional assistance in aid of
that he may not have an Amanuensis and
in this he may have one that serves
writing and attending in an official
character. All we said was in this sense:
merely that an arrest by a
Deputy without a warrant is not good:
but by this is meant that an arrest by an Officer
without the Deputy is not good:
the Sheriff himself alone can execute
the writ, either of Capias ad respondendum
or of a writ of Habeas Corpus and
when an authority of a public nature
is confided to two or more persons the
authority is personal and can not be
executed when the authority is delegated
to any other person. If a Deputy is guilty of any
default for which the Sheriff may have an

Action

Sheriffs
Gaolers
& Bailiffs

Sheriff and Gaoler

action against him immediately on
his own action on the case or Assumpsit
for money had and received to his
use. The record of this last shall
in all cases be the party injured
to such neglect. The first process
entitled summons and the part of the De-
fendant that he will appear at the next Court
to be holden for the County
of the Court and the Sheriff
to return such summons to the Court
at the time appointed for the appearance
of the Defendant. The Sheriff is
to take bail for the appearance
of the Defendant in all cases where
the Defendant is not committed to
gaol by the Sheriff. It is then the Sheriffs
duty to confine all persons who are not
admitted to bail in the common Gaol
of the County, but he cannot confine them
in any other Gaol which is not a Gaol
of the County, but he may remove
any prisoner from one Gaol to another
in the same County, if he thinks
it necessary for the safety of the
prisoner or for the benefit of the
Gaol

Sheriff and Jailor

Escape on a Mesne Process is not of itself a Fault. The Sheriff having the Body of the Party in Custody that he can not be arrested, a second Writ issues for it is usual to say that the Defendant remain in the Custody &c. The Plaintiff is liable to an Attachment: & because he can not be charged in Debt upon the Escape of Arrest — It has been decided in Connecticut that the Process shall run into the Jail where he is arrested. But the Jailor receiving this, may arrest: for it ought to have been proceeded with in the same manner as if it had been a Common Jail: for the Sheriff is liable to be sued — If Prisoners there are two Gaols in the same County and the Sheriff is not keeper of them both [illegible] Gaols, prove it known if two exist why one shall not be liable — Because he pays for [illegible] one

Kirby 68
Stiles 155
2 Conn. 239

a[illegible]

Sheriff and Gaoler

bind to commit his own Prisoners to the Common Gaol and the Sheriff is bound to receive them.

Of the Liabilities of Sheriffs for the acts and Defaults of their Deputies

The Deputy being sworn as the Servant of the Sheriff the acts of the former are the acts of the latter according to the well known maxim Qui facit per alium facit per se. Consequent by the Sheriff is liable for every Offence and of his Deputy. Hence it is that the Sheriffs are allowed to take Security from their Deputies for a faithful discharge of their duty. It has been said that the Sheriff is generally liable for the acts of his Deputies. The truth is this seems to be the official acts of the Deputy being upon the Sheriff who are the acts of the Sheriff the Sheriff is liable civilly and not criminally for the Defaults of Law that the acts of

2d Lecture

4 Bac. Ab. 641
2 Bl. Com. 328
Hawk. b. 2. c. 10. s. 4
2 Hawk. c. 9. s. 4
2 Roll. Ab. 92. l. 40
5 Coke 99. a. 98
5 Coke 80
2 Lev. 38

4 Bac. Ab. 641
Stat. 18

2 Inst. 591
s. 33
2 Bac. Ab. 54
2 Hawk. P. C. 84
Cro. Car. 187
1 Hawk. P. C. 38

of

Sheriffs and Jailors

of the Duchy are the Sheriffs of the Counties respectively and are appointed by Letters Patent under the Duchy Seal. The Duchy Sheriff takes the same oath as the Sheriffs of the Counties respectively do before the Chancellor of the Duchy or in his absence before the Vice Chancellor and the Sheriff is liable for the issues of the Duchy lands in the same manner as the Sheriffs of the Counties are liable for the issues of the Crown lands and they are accountable at the Exchequer.

All the Jailors of the Duchy Counties are appointed by Letters Patent under the Duchy Seal and they are accountable at the Duchy Office.

Sheriff & Gaoler

For the Defaults neglect of duty the Sheriff only is liable at Common Law not the Deputy is liable to the Sheriff - If the Deputy omit to execute Legal process he is liable only to the Sheriff and the Sheriff is liable to the party injured. The Deputy is not known as a public Officer at Common Law

What is called a breach of Duty means only neglect of duty and on this ground only are the Deciding to be collected.

What you call misfeasance committed by the Deputy both Sheriff and Deputy are liable - But mere neglect of duty the Sheriff alone is liable but for misfeasance both Sheriff and Deputy are liable as on bailments where there is confusion on the subject both the Deputy but no contribution

Where a Sheriff appoints a Special Bailiff he has his remedy against him as he is liable for his act as does a gen[illegible] Deputy

Comyns 143
Salk 95
3 Burr 1804
4 Burr 2015
Bac Ab Sheriff
(I) 2 Saund 74

Salk 95
Ld Raym 742
3 Term 321
6 Geo 3 c 38
3 Leon 238

Sheriff and Jailor

1 Wm. 320
Cyc. 81 331

Suit of the Attachment be made by
Examination of the Plaintiff to recover
Damages against the Sheriff and Taker
Bail or Action that the Sheriff attached
as the Goods of the Plaintiff or some
Part thereof may be complained

These Rules are to be observed
and kept by the Bailiffs Attorneys
Clerks and Ministers of the Courts. In Case
Contempt the Sheriff may be fined for
Contempt and Costs: and the Deputy
liable to the Plaintiff in an Action he
is here regarded as a Public Officer

The Jailor is accountable for the Escape of the
Sheriff &c after the death of the Sheriff
and before a Successor is appointed the
Jailors should enquire in case of
the Death of the Sheriff in a manner
and at what Distance &c the Prisoner

Sheriff
Sheriff
Sheriff

Sheriff and Jailor

any person is removed from office he cannot
exercise it; because the execution of a
process is an entire thing and nothing in
part may be communicated. And such
is the custom with all officers appointed to
serve process & executable &c.

Salk. 323
2 Jon. 73
Hard. 352
1 Roll. R.
893. 894

Of the ministerial and duty of Sheriff
By the Common Law of England a
Sheriff is a Judicial as well as an Executive and Ministerial Officer.
A Commitment has no Judicial
power. So an Executive Officer the
Sheriff could be sworn of as a Member of the
Court. So a Ministerial Officer
as he and his Commission of a Justice
of Peace. An Executive Officer is one who
acts only as he is directed by the Law exercised by
Writs of his Office and without any
Warrant from a Superior Officer.
A Ministerial Officer is one who acts
by Virtue of his Office and receives the Law in
Manner & the Commands of his Superior

1 Bl. C. 343
Hob. 158.

1 Inst. 168
Sir

Sheriff and Jailer

The name Executive power - in this local limits of the Sheriff's, or his County of the Sheriff as a Ministerial Officer in this capacity. The Sheriff is bound to execute all and every legal precept directed to him and to return all legal writs & precepts to him & duly executed & returned by the parties entitled & required. The Sheriff is not bound to execute at all events precepts directed, except when proper provision is made for his official capacity and is given what services they require.

In Connecticut, a Sheriff in office for a year is liable to an action and the same in New Jersey during a term of Sheriff in England. His office is considered as returns in four days and thus a term of years which is a sufficient proof. In Connecticut the Sheriff is bound to give a receipt & return to the creditor of any levy & sale &

Sheriff's or Bailiff

[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Sheriffs and Jailers

him, he may break and use any force & assistance to arrest the Appellant if he is not released &c. or can arrest the Defendant and take him before a Justice Knows the contents of the Writ & the Defendant must obey and may break the outer door or window of a house for that purpose after demand & refusal to open the same. 4 Bac. Abr. 553 2 Hawk. P.C. 133

Where the sheriff or other officer duly authorized to execute process, arrests a person by virtue of such process, he is bound to take the body of the party arrested before the Court or Justice from whom the process issued, with all convenient speed, unless he is otherwise directed by the party at whose instance the arrest was made. Stat. Ind. 580

The Sheriff may call to his aid the power of the County & may command all persons above the age of fifteen years to assist him in keeping the peace & in the execution of process. 1 Bl. Com. 343. 2 Hawk. P.C. 66. Will. 583 Dalton

Sheriff and Jailors

Sheriff and Jailer

Sheriff & Jailer

Sheriff is not liable for an escape occasioned by the act of God or the public enemies. Cowp. 1. 4 Bac. Abr. 2 Bl. 1. 2 Bl. 1. 3 Bl. 1. 3 Bl. 1. 2 Shaw 84

Sheriffs and Bailiffs

2 Roll. Abr. 565. 19 Edw. 3. 31 & Dec. 435. The rule is the same as to proofs to arrest a Sheriff for a false return, as for your Clerk: the Sheriff is the proper Officer of the Court: & the rule is the same in case of a proof by Affidavit entry and Retainer of the proceeds in Court.

6 Dec. 435. When a person is known to be a felon any person with a warrant & Constable may break open a House to take him: but it is found that he is not a felon the Constable & Others are found if without any Warrant.

2 Roll. 73. Sheriff may break open doors, though it mistakes an Affray or to prevent it. and if such persons who have given an Affray and pursued are entered a House & then pursuit break it open to arrest with the same Warrant. Else is one in Prison in a Civil process & he & that process is a Writ of Error

Sheriffs and Fines

Sheriffs and Juries

under a mid process unless it actually appear upon the face of it. This point is not settled in England though there is the best reason for the establishment of the rule as here settled.

Ld. Ch. The Court of Common Pleas may no doubt mend proceedings and if the Sheriff execute this process it is void and no plea on the face of it. So if the Court of King's Bench issue a process that ought to issue in Connecticut and justice of the peace have jurisdiction to a certain amount, the writ must be distrained by two Magistrates having jurisdiction and regular authority in Connecticut although it is generally true that if the Court has jurisdiction of the original matter the writ is not void but it is not unimportantly true; because if such an act is an illegal one, when the process is to be executed

Esp. 118
Doug. 387
Peake 99
Str. 1207
2 Ld. Ray. 1362
Tr. 308.

the

Sheriff and Jailers

[illegible] and [illegible] [illegible] [illegible]

Sheriffs and their
duties are very much the same in
Canada as in England. They
execute writs and the process
issued by the Courts in Canada
[illegible] must issue from the
County to which they are made returnable
as in England.
The principle is the same and the manner
here as in England the only difference
is in the different terms. Of the Court
of Common Jurisdiction of the original matters
of which it holds in England that which
is most analogous. Our Courts
[illegible] an original jurisdiction
to enquire by jurors to punish by
fine or imprisonment. Mr. Powell
explains the rule is the same as to process
&c. and that the officers can not
execute his powers to punish by
his proper authority without some
statute. not immediately but after
such proceedings as in the
case of [illegible] Mr. Powell [illegible]
[illegible]

Sheriffs and gaolers.

The Sheriff is to enter his proclamation &c. &c. &c. concerning the writs originally in the Exchequer touching the profit of the Prince

There must be an arrest actually and corporally made, or there can be no escape. But words only will not amount but an arrest. There must be an actual touching of the body or a power of immediate restraint and submission to the power: it is not sufficient, that there should be an actual confinement of the body, for if the officer says to the Defendant "I arrest you" and he submits, it is sufficient.

If a prisoner at the suit of A. and in the custody of the officer makes his escape & A. sues the Sheriff in an action of escape, it is no plea in bar for the Sheriff to say that he has retaken the prisoner before any action brought against him for the escape

to

Sheriffs and Jailors

for both and the Officers liable

It is doubtful whether they could

obtain it in Connecticut because the

Courts there issue different Writs from

precepts issued on either Civil or Criminal

Process or on the Body of the Defendant: and if the Courts Writs should

chuse here it would not be optional

to take either Capias or Bail.

The actual Arrest should usually

be made in pursuance of some Legal

Authority and in all Civil Cases the

Arrest ought to be made by virtue of a

Legal Writ. The Arrest in Criminal

Legal or Civil cases must be made

by the authority of the Officer to whom

the Writ or Warrant is directed. The

Arrest must be in the corporeal Body of the person

against the Arrest may be made

following

Sep. C. Ct. Conn. 6. 2 Dan. 233

Sheriffs and Bailiffs

Camp. 65 Cand 201 possible but that he is employed in the same business must be proof sufficient in the same proceeding that the same place or accommodation the same kind of business in the Cabinet in all Bonds Vase, I wish I were it is not real and so there will be no cause = The same rule obtaining as to Bailiffs by breaking the seal or Writing &c. Law and to be made secure. I have only proceed in Law

Sheriffs having an opportunity of appeal before or neglect it and the Defendant in execution cannot the Sheriff the officer is liable for neglect of duty in not acting in the case

Of Escapes

There are two kinds of Escapes viz. Voluntary and Negligent Escape. Every person who is charged with the custody of the body of another by virtue of process issued out of any Court of Justice

consequently if he go out of the Prison, 3 Bac. Ab. 15.
Escape for a Moment the Sheriff is liable
for and guilty of an Escape.

The Sheriff by common right & bail the
Prisoner out for any trifling or small
Misdemeanor and Misdemeanors.

A Voluntary Escape is one which 3 Bac. Ab. 16.
takes place with the consent of the Officer
or for the Sheriff's Gaoler himself
suffered it wilfully
& illegally Escape, or wilfully take
him without the consent of the Officer
or without his knowledge the word Wilfully
does not seem to be superfluous:
for it is not necessarily voluntary because
the Sheriff knows it: for suppose he is
by force. When a Sheriff arrests
for a person not bailable for a 3 Bac. Ab.
Capital or Voluntary Escape: So if a Sheriff 9 Mod. 28.
arrests & let the Prisoner [illegible]
or goes in company with the Prisoner
to a Gaming House & Voluntarily leaves

Sheriff and Jailer

Sheriff and Jailer

bound on a Writ of Habeas Corpus
ad subjiciendum" the Sheriff is
guilty of a misdemeanor Sec. 1
and Sec. 2 of the Act and the
prisoner shall be discharged
from the custody in which he
was found guilty of.

But if the Sheriff, with due
diligence may not ascertain the
guilty of a prisoner committed
by a Justice of the Peace for
any offence, he may take the prisoner
before such Justice and on the
Justice's refusal to receive the prisoner
the Sheriff is discharged from
the custody of the prisoner.

A Sheriff who allows a Writ of Habeas
Corpus to be served on him, and
neglects or refuses to bring the
prisoner before the Court or Judge
in obedience to the Writ is guilty
of a misdemeanor.

The Sheriff must keep a register of
all

Thomas Smith examination

Thomas Smith
Taken 28th
Sept 1848

I am upon oath guilty of an Error in
a Testimony Sworn by me on the
instant a printed Summons of the 21st
Inst was left at my House by a Policeman
I the Defendant having the Liberty of the
Court Thomas Smith a Defendant to appear
by Counsel or Attorney to answer
Oath made
before me
Sept 28th
1848
J. Hall
Mayor

the Charge Exhibited against him by the Chief Constable
for that he the said Thomas Smith
Being an Inhabitant of the Borough
aforesaid and Liable to be Rated to
the Poor Rate of the said Borough
did refuse to pay the Sum of Two
Pounds Ten Shillings Rated and
Assessed upon him for the Relief
of the Poor of the said Borough
and Refused to Appear before
me the Mayor of the said Borough
to Answer the Complaint of the
said Chief Constable Touching
the Premises Whereupon I the
said Mayor did Issue my Warrant
to Levy the said Sum by Distress
and Sale of the Goods of the said
Thomas Smith and for want of
sufficient Distress I did Commit
the said Thomas Smith to the
House of Correction for the
Space of Fourteen Days unless
the said Sum and Costs should
be sooner paid and Satisfied
And I the said Thomas Smith
do Humbly Pray that I may
be Discharged from my Imprisonment
and that I may have Liberty
to Appeal against the said
Conviction and Order

Thursday and Friday

the Officer is obliged to carry the writ
into execution [illegible] of the writ
to the Court [illegible]

In an action for trover against an
Attorney for embezzlement of the writings
of the Plaintiff, sufficient evidence
to charge the Defendant is proof of
Plaintiff's having delivered them
to the Defendant, and that he refused
to return them

The difference between the Court of
Chancery and Common Law Courts
of Justice, or Modern and Ancient Practice
of the different Courts, and Final Process
&c. &c. Arrest at the Suit of Party, Remedy
against Arrest if irregular &c. and
Costs. Same of Common Law Process.
The Warrant is that for the Process issued
against a Defendant and the
Sheriff's Officer is obliged to return the execution
or Writ to the Court. At present there
is an Action brought against a Defendant
without his having received any Notice

Law

3 Bl. Com 16
Co. Litt. 73.
Thursday
Dec. 1803

Trover

Doct. & Stud. 172
3 Bac. Ab. 415
Fitz. Ab. Tit
Ass. 16

Sheriffs and Jailors

Law to go at large without entering the Office provided he appears as the Defendant at Trial or pays the Debt and Costs. Arrest and Imprisonment are not on Mesne Process the exercise whereof depends on the Action of Debt becomes and is not known that the Defendant is not worth before Trial. The object of the Arrest or Capias Statute is to compel Defendant to give Security for what may be recovered. The Officer for not taking the Defendant's Bond will subject himself to an Escape unless after a Return of Non est inventus is returned.

The difference between the Statute Law of Imprisonment and the Common Law is that under the former the Defendant must be arrested at the Return day. The Consequence of which would be that judgment would be signed against the Sheriff for not bringing the Defendant to answer before the Court

Sheriff and Jailer

to returns by the Officer if sufficient
The Officer must have a reasonable
time to make his return, and this must
depend in circumstances (But if the
defendant is not in Custody at the re-
turn of the writ the Officer is guilty of
a negligent escape. He must be a negli-
gent escape because he has a
right to refuse to let the prisoner go
bail and taking a right to let him
go at large. A voluntary Escape is a
crime, but there is no crime. The
Officer may take bail bonds to secure
him against an Escape but he can-
not stipulate for liberality as he would
if he had given a voluntary Escape
If a prisoner arrested on Capias ad
respondendum, and then surrendered
to go at large, a voluntary Escape with
a promise to be by a certain day, and
the prisoner fail to surrender

& Ed Rep.
572. x 68
2 Wils 98.

Sheriff and Jailor

to prison is to be kept in safe and
close custody, until delivered upon
course of Law and the Officer is
a, to the person he is to keep the
Fee of the Officer permits a Fiducia-
ry Bail, he is liable at all events he
can not plead in Bar the Insolvency
of the principal debtor as the Officer's liability
is the Officer's liability. In this case
plea and demurrer and Replication
Plaintiff Demurrer sustained
and Judgment

The Officer is discharged upon
oath of an Insolvent and on Bail
bond. In case of an Escape upon
Execution against the Debtor
Plaintiffs
he recovers of the Sheriff the
debt. also the damages and Costs
The rule of evidence here is the
same that in ordinary cases. Ex-

Sheriff and Gaoler

The prisoner confession out of Court that he owed the Debt is good against the Sheriff. But an Escape on Mesne Process of the Plaintiff, by him regarding is discharge on the case on under the intestate Warrant? Or an action of Debt if this he has Remedies.

The action of Debt is the most eligible action for the Plaintiff to bring because there is a Difference in the Rule of damages in these two cases. In an action on the case the jury give what damages they think proper but in Debt they are bound to give the whole amount recovered: they may give the whole Debt. But in an action of Debt Government cases are bound to give the whole Debt & damages. If they do not the Court will set aside the Verdict. This can not be done in case of single proofs. There are two more Cases distinguishing. A Gaoler or Sheriff's Servant may be charged that in a Mesne case action or Mesne process

1 Esp. Ca. 57
Bull. Nisi P. 65

Esp. Ca. 57
2 Term Rep. 129
2 Bos & P. 1048
3 East 115
Ch. Dig. 1 202

2 Term Rep. 765
2 Wils. 295
Ca. t. P. 609
2 Bl. R. 1048

Esp. Ca. 57
3 k.

Sheriff and Jailer

If Contempt the Sheriff shall in any
Action for the whole Debt in first Ca.
Sa. This is the power & function of the
Sheriff and it can not be avoided.
If a person arrested in Chester process is
brought before me it is my duty the Offi-
cer is rewarded: Original process refers
to the expense for the Officer: he Sheriff
have had a sufficient power to arrest
persons. All Courts human-process ha
can not do any power which will
justify this distinction. The Officer is
known in case of these as well as final
way to have sufficient power.

After the Defendant is arrested and
committed on these process recover is no
use: only it be by public warning:
the Sheriff is bound on final process to
have committed. The Gaol is a place
of Strength and the law will not
in the idea that it can not retain
debtors thereby.

Sheriff and Jailor

In case of rescue when the Sheriff is liable the Plaintiff may sue either the Sheriff or the rescuers or he may sue the rescuers in all cases but where he discharges the Sheriff. He can not sue both. Should he sue the Sheriff the Sheriff may sue the rescuers & lay out in Court and in Broke Jones that the plaintiff was in his case being either Trespass or Trespass on the case. This Declaration Mr Foster observes is not Case. Trespass is not adapted to this claim. Trespass is grounded on positive but here the injury is consequential. Trespass and Escape on the case are not similar. Case will lie against the Sheriff or his bailiff or escape and Debt will lie against the Sheriff only but they should be carried out according to the form of the Court, or the case lies in the former action. If a rescue against Escape the Jury may give either the

Cro. Eliz. 657
Cro. Car. 96
1 Sid. 91
1 Lev. 91
1 Vent. 91
Cro. Car. 485

Salk. 100
Cro. Jac. 485

Sheriff and Gaoler

on part of the original Defendt. and if
part the Plaintiff may proceed against
the original Debtor or Defendt.
or the Defendant in the first action may
voluntarily surrender himself into the Gaol the
same may give effectual discharge as
against the remedy if they please
to an action against the Sheriff for
a Escape where the person escaping the
Sheriffs retain "Capias" on the back
of the Writ is evidence in his favour
that if the Sheriff make a false re-
turn the plaintiff may have his ac-
tion and prove it false.
The Officers may [illegible] and re-
ceive the fees allowed to them by
the pleadings for it delivering in Court
Affidavit to be made thereof, they have
power to [illegible] the Debtor, and
may even have the assistance
of the Sheriff's Bailiffs to execute any
Warrant or other process for all
cases

Sheriff and Gaoler

Ent. 2
M.H. 50
4 Bac. 559
2 Ch. 49 a
165.

or after commitment or mesne process
may be found, in the recovery in all
cases where they liable to the Plaintiff
if the Sheriff is liable in case of escape
after commitment & Gaoler that may
be liable in case of escape where the
Prisoner is brought out on a writ of Ha-
beas Corpus to be tried &c. After a com-
mitment on and process or after an
arrest on final process and escape
of that the Sheriff unless by public
enemy or the act of God or by light
ning or an Earthquake. Common
Law is as above = It was formerly
holden to be Law that in case of a
voluntary Escape on final process the
prisoner was absolutely discharged and
the action lay against the Plaintiff re-
covered on the Sheriff: they is unreason-
able and therefore not Law. It is now
held that the Plaintiff may have
an action at first against the Prison-

1 D. 610
5 Mod. 487.

4 Co. 94.
1 Lev. 87.
Cro. Car. 405.
2 Bulst. 183
2 Roll. Abr. 1
Cro. Car. 510

Sheriff and Jailer

6 Co. 52. 2 Inst. 239. 3 Co. Inst. 35. 4 Inst. 36. Post. 96.

an Act, recovering the original Jurisdiction by Writ of Detinue taken out Execution thereon at common Law: But now by the Statute 21 Jac. 1. Cap. 16. the Plaintiff may have a more speedy Execution without a Writ of Error. And it seems to be Common Law, the Plaintiff may retake a Capias ad Satisfaciendum or Elegit, and have a new Execution of Debt. Yet if there is a Voluntary Escape, the Sheriff cannot retake the Prisoner, for then the Plaintiff can not have the original Debt: Therefore in such case he only may retake the Prisoner, who has the Privilege to retake an Escape Warrant.

3 Co. 43. 5 Co. 86. 2 Roll. Abr. 552. 2 Hawk. P.C.

Where the Escape is Voluntary the Sheriff can not himself retake the Prisoner, for an Escape can be maintained by Action against him because he is deemed to have consented thereto. Neither if the Sheriff has retaken him upon Fresh Pursuit of a Voluntary Escape

Sheriff and Gaoler.

is always a Crime: it follows that a bond cannot be given to indemnify the Sheriff in such a case: therefore if one is given it is void. In case of a voluntary Escape then, the Plaintiff may sue either the Sheriff Gaoler or Escapee: and if he recover against the Sheriff any person by law the Sheriff he may sue the Original Debtor. Where the Escape is negligent the Sheriff may sue the Escapee instantly: the Plaintiff may not institute his action against him (i.e. the Sheriff) if the Sheriff has taken a bond of indemnity in case of a negligent Escape he must take his remedy on the bond. If he has a higher remedy it cannot accrue to a lower one. If there a Sheriff Bailiff has pursued an Escape the Bailiff has no remedy against the Escapee though he may be directed by the Sheriff. The Sheriff may sue the Escapee

Cro. Eliz. 97
2 Bulst. 213
1 Roll. Rep. 100.

Bulst. 214
Cro. Eliz. 97

Cro. Eliz. 512
" 613
Cro. Eliz. 513.
Sir Thl. on Ed. 234
Dyer 53 a.
3 Roll. Rep. 52.

Roll. 57

Dig. 513
2 Ed. 4.

Sheriff and Jailer

Sec. 5 C. 3. 2 E. 2. c. 4.

Power and power of the Sheriff to pursue the offender into other States.

In the United States there has a question arisen whether an escape can be taken by an escape warrant in another State? Mr. Foulke thinks he may be taken in another State in the same manner as for the same reason that goods can be taken and which they may in. If a person arrested on a Criminal process escapes he is punishable by fine or imprisonment: and if he escapes by breaking the prison, the prison and all around to belong

of the Sheriff, so much a voluntary escape in case of a felon he is guilty of felony or a felon by an escape after the fact. Or he is guilty of misprision after the fact as he does not: and the Officer can not be punished until after the principal is convicted.

And upon conviction of the Principal

Sheriff and Gaoler

the officer may be punished by fine and imprisonment as for a misdemeanor — If the officer has been arrested & refuses to pay the Debt or obtain from the Creditor time to pay the Debt & applies to the Gaoler for the Prisoner to be committed to the Gaol & the Gaoler receives him into his custody & afterwards suffers him to escape, he is liable to an action of Debt at the suit of the Sheriff & may plead the Gaoler's wrongful act in bar — but if the Sheriff himself has been guilty of any wrongful act in the Escape, the Gaoler cannot plead it in bar of the action — If the Gaoler has been guilty of any wrongful act in the Escape, the Sheriff may plead it in bar of the action against him — If the Sheriff has been guilty of any wrongful act in the Escape, the Gaoler may plead it in bar of the action against him — If after a legal Escape the Officer retakes the Debtor before he is out of Prison

Sect. 18 Ch. 20 Ed. 3 St. 2 Ch. 11

Creditor pursue

Sheriff and Jailer

1 Stat. 88. 1 Bibb. 91. 1 Tait's Dig. 221. 2 Stat. Dig. 1 Bibb. 180.

on such writ and before any action is brought against him liability to the Plaintiff is violated. Any petition before an action is brought against the Sheriff or Jailer on such writ according to the Common law rule of pleading a petition when that is the defence on such writ must be pleaded specially. Upon a statute of Limitations it may then be given in evidence under the General Issue. If the action is brought before the expiration of such second term, or not discharge the prisoner on a voluntary return of the prisoner or body into custody before the action is instituted discharge the officer. But in case of a voluntary escape recaption or discharge of the Sheriff he may nevertheless retake the prisoner and detain him until the time given by Statute imprisonment until the end of the voluntary return

after

Sheriff's and Jailors

after a Voluntary Escape. The rule is the same the prisoner is not to be discharged on a bond of Habeas Corpus: the Sheriff is liable. Where there has been a Voluntary Escape a subsequent arrest & that Escape, by the Plaintiff in the suit does not discharge the Sheriff. In case of a Negligent Escape and an action brought against the Sheriff he may retake the prisoner for his own security though his Body and goods be taken in execution against the Sheriff; it is said that the Sheriff has no right to discharge a prisoner committed on Execution on paying the custody of such Execution to himself: and if he does he is guilty of a Voluntary Escape. It is the duty of the Sheriff to keep the prisoner until delivered by due course of Law. The Sheriff & his officers & the Law and can not make themselves agents of the Plaintiff, and he may prosecute the transaction

5 Co. 93. Yelv. 59. 61 " 61a 2 Inst. 314

Buck 371 Yelv. 61a

2 Inst. 589 Yelv. 97 Cro. Car. 218 2 Mod. 225. 3 Co. 55

Sheriff and Gaoler

It is a settled rule that if the Sheriff after a Negligent escape discharge the Gaoler, the Gaoler can not take him to get his fees: he ought return but he can not retake him. The reason is that the Gaoler is considered as part and so the shall not retake, because he hath committed his power & trust by his first return - As a fortiori Gaoler having the liberty of his prison by only a legal and Proper discharge the Sheriff is allowed to retake him on fresh pursuit and of the retaken on mesne process the [illegible] Sheriff may recover on his bond if insolvent - yet when the Gaoler has voluntarily made himself Debtor by receiving the Debtor upon discharge - after which Gaoler the Sheriff and hath no power to retake the prisoner as Gaoler

Sheriff aux Jailer

make himself chargeable to the Plaintiff - the action in Consideration for the neglect of Duty in an Officer and Lawful in his Office - after the Party has a right of his debt by the Statute of Limitation, the Sheriff can not recover on his bond of indemnity: and if Judgment has been obtained on such bond and the Plaintiff's Debt is barred by the Statute of Limitations, the Defendant in the bond may be relieved in a Court of Equity - Under a Bill for Discovery brought the Plaintiff cannot give in evidence, a Negligent Escape, but it must be stated in the Declaration & to avoid a Recognizance the Defendant may only plead fraudulently or such Bail without denying the Escape - The Plaintiff cannot avoid the act of the Defendant between Party and Negligent Escape in his Declaration by way of Replication

1 Ld Raym 396

2 Ld Raym 1528

Sheriffs and Jailors

In a Negligent Escape the Sheriff is liable (first in case of a Voluntary Escape by a Gaoler or Jailor the Sheriff is liable to the party grieved as if the Escape were his own) in a Voluntary Escape by a Jailor the Sheriff and the Jailor are both liable to the Sheriff for the damages recovered against the Sheriff, and before the plea is pleaded the Judgment in such action may [illegible] and the Sheriff may plead [illegible] and discharge himself.

Of Judgment and Execution how such recovered against them before the reversal of the Original Judgment &c can Attach and Seize the Body of the Sheriff &c

Of the Sheriffs liability for false returns

If a Sheriff wrongfully & falsely returns that he has executed an action of Debt &c on the body of the party and he is not

false return: and the party injured
may be either the Plaintiff or Defen-
dant. The rule is in England if the She-
riff make a false return he cannot
contradict it if it appear by all on the face,
though in fact it is false: he can not
plead in abatement. Action on the
case is the only remedy for the Defendant
In Connecticut the rule is different.
The Defendant may plead in abate-
ment to falsify the Sheriff's return. That
the writ was not served until such a
day proving it to be too late. Thus the Suit
would be defeated and then the plaintiff
can sue the Sheriff for injury done to him.
The Defendant may also (Mr. Daniel
supposes) have an action for being
misled into Court to defend his action.
Now if the Sheriff make a false re-
turn of non est inventus when the De-
fendant could be found the plaintiff
may have Scire fac and then ca. sa. for
false,

Sheriff and Jailor

false return. In Connecticut if the prisoner escape through the insufficiency of the jail the County is liable, not the Sheriff because the County is bound to build and maintain a sufficient jail. In England and otherwise in the State of Maryland the Sheriff builds the jail himself and consequently is also in its insufficiency

The remedy then in Connecticut for a party injured by such an escape, by reason of the insufficiency of the jail is a petition or memorial to the County Court and not by action. If the petitioner pushes justice is not rendered him he may appeal to the superior Court. According to the practice of Superior Court the damages are assessed by the Jury & a report made, & an

The County then is made

Sheriffs and Gaolers

liable only for the special damage they
sustain by this Constitution, although
the County ought to be recovered to keep
sufficient Gaols: the great inducement
with this liability being to
the part is at the time of escaping a-
ble to pay the Debt and by escaping
saving the Debt. the County is liable for
the actual damage & the whole a-
mount of the Debt though the Gaol
is insufficient yet if the Prisoner is aided
by the neglect of the Sheriff or is fa-
cilitated by it he is liable

Miscellaneous Rules

If a Creditor voluntarily discharge
a Debtor taken in Execution whilst
he has been committed or not he can-
not recover after against the Debtor
Debt is extinguished and he can not
retake the Debtor though the Dis-
charge is Conditional and the Con-

Com.

4 Burr 2480.
2 Ca. 243.
1 Rick 33
6 Mich 325.
7 Rep. 20.

4 Term 344
2 Ves 348

a joint debtor, yet the plaintiff never can
relate back as to any thing after
execution the judgment. he can not
even prove a Condition of Discharge
(where the Discharge is conditional)
but the Discharge is void from the
Beginning. and the plaintiff may
have an action on his original
judgment. And the rule goes further
even & holds that if the plaintiff
discharges a Principal debtor
Execution and take a new Contract
which proves to be invalid by reason
of some infirmity, the plaintiff still
has no remedy. he can never
can it be a Good discharge unless
positively in a Case of Death &c
which further holds that if the plain-
tiff take a bond under seal &
the Defendant discharge it, and
take another bond in the first
Debt and consequently the bond

same

cause granted as if there had been no
debt - If two joint-Debtors are taken on
Execution, a release of one by the plain-
tiff is a Discharge of the other, and to
retain one is false imprisonment -
If the Debtors are bound jointly and se-
verally a release of one must be a
release of the other Coheirs; because
the Judgment was joint -
A Voluntary Discharge of one Endor-
ser of a Bill of Exchange is not a dis-
charge of any other - In the Appli-
cation of this Rule we must distin-
guish between this case and those of
Common joint Debtors - Successive
endorsers on a Bill are not Joint
Debtors - The case does not come
within the rule: each making a sev-
eral undertaking, and they are in no
sense Joint-Debtors - It was formerly
holden that if a Sole Defendant im-
prisoned on Execution died in prison

the

S. P. Car. 2 696
17 Feb. 03
Sack 3 579
2 Ld. 557
5 Co. 86 a
Chitty 182

Sheriffs and Gaolers

commonly so and the Statutes of Pine
and Fines. The Statute is extant
verbatim as it might be read for the pur-
pose of Extortion = The County of Lan-
caster have accepted the Acts, that the Sheriff
need not attend during the Assizes.
It seems in England that the Sheriffs were
to the Fees. But Coke says he cannot
find no reason for this -

By the Common Law all persons whom
indictments are to be sent thereto, except-
ed when after Attainder: felony and not for
all their property is forfeited to the King
before Attainder they are bound to appear
personally - The Gaoler is not bound to dis-
part a Prisoner: the Executor is not bound
to prosecute him, and if he may do it provided
he must prosecute the Cause of
the people. If the people will give him
nothing who is to be sure he cannot live and
is for of this gets a Act. Clarendon the
Assizes ordered by Parliament in Eliz: and Car:
2 Inst. 63
Stat. 42
1 Inst. 168
Stat. 42
2 Inst. 63
Stat. 42

D. Statutes

Of certain Statutes Regulating concerning Jails in Connecticut.

A person committed to Jail on any Offence is to bear his own expence, if he has the means and ability. If he has no means he may be assigned in Execution - (Stat. Book Edition, and regularly sent out of the Town or State Treasury in the first instance: and then the Estate of the person imprisoned is liable to reimburse them - If a Jailor takes from any prisoner greater Fees than the Law allows, he is liable to treble damages and to a fine at the discretion of the Court. When a person is committed to Jail he is obliged to take his own oath on which he is admitted to the Jail Liberties with this oath in trial he has an Estate of the value of £. and sufficient property to pay the debt for which he is imprisoned: & then his being admitted to the oath he is discharged from prison on

Stat Book Edition

Treble Damages

Stat Book Edition

Sheriff and Jailor

[illegible] in Case of the Death [illegible]
the Sheriff, and to their [illegible]
[illegible] of the Second Court may be [illegible]
Power to [illegible] the Sheriff is bound to obey
even if he does not [illegible] his Letters Patent
Voluntary Escape - Where the Ex-
ecution issues from the Superiour Court - 4 Bac. Ab.
this Court to the same Authority - 393

Parliament

By James I. 1604

Parliament is the assembly of persons
in a certain place at a limited time, that they
shall be present at the Parliament where the
Parliament for which they were called is to
assemble, or summoned, or they shall be
dealt with according to the Parliament.
Item it is about the Parliament of persons good, &
&c. to speak, into his return, a certain is here
implied that he shall declare them when
called upon. So if men are given in that
for there is an implied covenant that they
shall be delivered when called for: and also
that they shall be made up in a workman
like manner. In general the decisions
have continued to what appears to be the
principle: the opinions and votes are very
various in the Parliament the Parliament
for the decision of suit shall in the case
of Bonds and Penalties and the practice of
the Parliament seems to be the only decision of

Parliament 3.4.8.
2. Pl. C. 258.

Parliament

Ireland

Knowledge of the subject
[illegible] duty & qualification, bodily
& [illegible] as a right preference to all
other qualified [illegible] Lord Holt says
persons [illegible] a physical necessity absolved
all other laws [illegible] - Blackstone
[illegible] gives [illegible] a qualified Property
and it [illegible] he [illegible] [illegible]
[illegible] a stranger

Vide Butler's case in which [illegible] has
[illegible] the property of the sailor, while he
[illegible] for his service - [illegible]
[illegible] the continent [illegible] Property
[illegible] [illegible] the [illegible]
[illegible] [illegible] the owner but he
[illegible] [illegible] [illegible] -
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

Bailment

of Railroad & follows that the Railroad owned
both the goods safe during the aforesaid
time or be liable for a loss happening
that many happened during that time. But the
Railroad would have been guilty
of negligence if they did not take proper
precautions to prevent the destruction of the
Railroad by fire. The liability of the
Railroad & the conduct of the Railroad
I. The use to which the property of the
Railroad, known as Flying Express, was
to attention than another, and the pro-
perty of the Railroad was such a diffe-
rence under the circumstances
then, the Railroad were entitled to have
a greater time with the Goods but they are
not bound to the value and would be
very possible a difference. In ascertaining the
diligence required of the Railroad, would
should they may have to Railroad
to have regard of diligence, are necessary

in different cases. And to ascertain the diligence necessary in each case, we must attend to the following rules, which are founded on true principles.

I. The most general rule, is that the bailee is bound to take such a degree of care for the goods, as is proportionate to the nature of the bailment, according to all the circumstances of the case. In some cases, more than ordinary care is necessary, in others less; but the general rule is, that every man is bound to understand his own affairs, and to use that degree of diligence, which prudent men in general, use in conducting their own affairs; i.e. that degree of common prudence. Such in these cases, would be left to the jury. If more than ordinary care is taken, it corresponding benefit. But the omission of ordinary care is called "ordinary neglect" slight neglect, the omission of diligence

diligence: gross neglect is the great criterion of all diligence and fraud.

Gr. gross neglect is evidence of fraud in the bailee though not conclusively so: if the bailee treats his own goods of the same kind in the same manner, this rebuts the presumption of fraud. Gross neglect is in practice considered as equivalent to deceit or gross stupidity and is justly holden a violation of good faith. In order to absolve these general observations to particular cases, three rules may be observed

1 Where the benefit of the transaction is for the bailor no more than good faith is necessary: ie the bailee is only liable for gross neglect which amounts to a violation of good faith. As where goods are kept gratuitously for another. Where however it has been holden that he must keep them entirely without regard to his own. But in the Indian Code this is reduced. There is no exception to this general rule, when the bailee

2 Pet. 246. Jones 30. 66.

4 Co. 83.

matter himself to the law governed by special agreement: for he may become an insurer of the thing by his undertaking to keep it safe & restore it, except in cases of inevitable accident

1°. When the bailee only is benefited — he is liable even for slight negligence: i.e. he is bound to use more than ordinary care

2°. When the bailment is for the sole benefit of the bailor, where the diligence usually observed is sufficient, only ordinary diligence is required

3°. Both sorts of bailment are subject to certain rules, are from the Roman law

According to the Common Law Bailments are divided into 3 sorts: and the sorts being such as they are described, not because they are legal but because the Courts have observed them

I. The first sort is called Deposit in English Deposit. It is a delivery of goods to the bailee to be kept for the bailor without

without power, and the bailee is called a "naked bailee"

II. The second class is called Commodatum ad Pan. 3, 19, 1, 5 dantum. This is a gratuitous loan of goods without power, for the benefit of the bailee as where one borrows a horse to ride with out hire. This class of bailment is quite from that called Mutuum —

A mutuum is not strictly a bailment for here the thing is consumed, and only an equal quantity of the same kind is returned, as if A. lends B. a barrel of flour and B returns another barrel. Hence in Mutuum the absolute property is transferred, and the transferee must bear its loss, if it is consumed or injured by fire or any other inevitable accident. This is very different from a Commodatum, for in this the thing is to be returned and the owner, as in other cases of Bailment must abide its loss, if it is lost by inevitable accident

1 Story Eq. Jur. 95, 96. Domat 1 Book 6 Title 5 189.

III. The third sort of bailment is called "locatio" This is letting goods to hire or reward. Thus a man lets his house to B for £5 per Ann or £5 p.

IV. The fourth sort of Bailment is called "Vas pignori accepturn" or "Pawn" This is a delivery of goods as a security for a debt due from the bailor to the bailee. The bailor is called "the pawnor" the bailee the "pawnee"

V. The fifth sort of Bailment is called "locatio operis faciendi" This is a delivery of goods to be carried by the bailee or some act to be performed upon or with them for the bailor, and for a reward to be paid the bailee for this sort of bailment — the act given for the bailor. Under this head is classed the delivery of a thing to be brought to be carried to another place. As also the delivery of goods, to be carried or forwarded to the delivery of them by the carrier. Thus a person delivers a parcel to be sent

Jones 111
2 Ray. 913.
Jones. 89.
113

Jones 89.
2 Ray. 913.
Jones. 89.

Thus

Bailment

The 1st Kind of Bailment proper is that kind of bailment, properly so called under the third class as given by Lord Holt: for in the third class the bailee charges: in this the bailee Common carriers and Innkeepers are charged under this head because they presume promises to do something with it

VII The sixth class of Bailment is called in Latin "Commodatum" and differs from the fifth in that the bailee has the use of the thing lent

We will now treat of each of these classes by themselves. I. The first class is called a Depositum or pledged Bailment. This is a trust delivery of goods to be kept without any reward: and the bailee is only liable for gross neglect which is proved in a court of Equity. Every day ordinary care will not discharge the bailee. But the Kind Kind that costs him ordinary care will not that he can be liable only for the grossest degree of faith. Where if

a. Bay 77. 94. Steph. 1069. Jones 32. 65. 5. 1 Ld. Raym. 1. P. M. 132. Peake 3 y. a. 19 Durnford

Bailment

such cases; where there was a valuable consideration, and a bare undertaking. But the distinction is very slight, and it is at present settled, that a delivery of the goods is a sufficient consideration. A bailment is a transfer when it is expressly or impliedly one, where there is a special trust and confidence, but the distinction between a bailment and a contract is very slight, and the distinction drawn the two parties of the bailment the relation is precisely the same.

Dyer 73. 109. 2 Bac. Abr. 95. 12 Mod. 487. 3 Burr. 1909. 1 Term 240. Cro. Eliz. 816.

If a thing be delivered on contract, and that the goods are broken upon a short note and the bailee to pay the bailor, it shall not be the short. But this is varied by local usage in the case of carriers and innkeepers, and he says that the bailee is equally liable for the short, as for the short. For he has equal power over both. But for goods stolen both of them are by, and through the trust and confidence of the bailment, therefore the contract of the short be divided as liable for both through the

2 Ray. 909.

the bailee keeps the key: for 'tis now the contents what matter it, who has the key. But on the other hand if he do not know the contents of the chest he ought to be liable only for the chest: for not knowing what it contained how could he know what care to exercise. And not only the bailee ought not to be liable for the contents, unless he has been guilty of neglect: and if he did not know the contents how could he pay due attention but by the chest itself. Certainly he ought not be liable to the bailor, who may himself be guilty of fraud in concealing the fact of its contents. The law will not imply a promise to keep goods safely, when their existence cannot be, and is not known to the bailee, the contract amounts to no more than insurance: or he merely promises to keep them safe. Now under the law of insurance, he would not be liable if there is the least suspicion of fraud as to the statement made of the goods

Dig. 19. 2. 24. 3.
Dig. 47. 5. 1. 4.
C. 4. 32. 4.

Dig. 19. 2. 13. 5.

goods or any part of them to the insurer
i.e. if the Stakeholder is the least interested
the insurance is void. The Depositary
may extend his liability by express Stipula-
tion; but a promise to keep the goods safely
does not subject to all events or any act
of God. For "actus Dei nemini facit injuri-
am": Nor is he liable for stolen robbery
robbery: though he is for actual theft.
Hence it follows that he is liable for gross
default also. If however he should by negli-
gence, may say to lose the goods & be
bound: nothing he ought to be liable for the
act of public enemies. If the Depositary
refuses to restore the goods, when properly de-
manded or has converted them to his own use
he is liable to an action of detinue or trover
or an action of assumpsit on the promise
for unlawful detainer after demand
& refusal. If it pair if the action be
brought to keep the depositary may avail
other defences as a Bailee.

Jones 62 3. pt
2 Roll 2 pt
Dr 9 Rep. 30.
1 Com. Dig 48 9
Hob 34

1 Com. Dig 250
1 Bac. Ab. 12.
9 C. 122

Testament

III. Commodatum: This is called in English a gratuitous loan or lending: it is a contract of the civil law of the United which is to between the [illegible] and [illegible] Thing

[illegible] Can. 219. 220 Can. 219. Can. 219. Can. 219. Can. 219.

[illegible] I. to the borrower a thing which he [illegible] to the lender and he is bound to restore the same thing borrowed [illegible] [illegible] [illegible]

Railroad

never liable in this way, unless the goods
are left in their care or possession
or be lost by the fire of the Wood, or some
like inevitable accidents as lightning
thieves &c. But Mr. Parker thinks he may
possibly be liable, even in this way, and
that he was observed is applicable to all
cases of Railroads. For aught he may
know he may be liable for inevitable accidents
by a positive breach of trust and this is true
in every case. For if Mr. should borrow
Mr. Jones's horse to go to New Haven, and should
on his return Lightning and the horse should
be killed by lightning. Mr. Parker would
be answerable for the loss. So if he should
borrow a knife, and should lose the sheath, and
the knife should be stolen. This rule applies
to all kinds of Railroads.

Parliament

the Law of the Continent: and it is petitioned to grant: that the trade may not be [illegible] Lord 29. Geo. 3. or 32. [illegible] 29.

IV. This clause of Parliament, is called a Clause and is [illegible] of a Tax, that from the Factor to the Factor: This is the Nature is [illegible] that it passes from [illegible] Particulars - the Clause [illegible] [illegible] [illegible]

Bailment

goods might be sold by way of pledge. In one sense the contract is advantageous to both parties: since the general rule, that the bailee is bound to use ordinary care only, is liable to ordinary neglect only. But in Southcote case it is decided that the bailee must use proper care only, as he can't be in any greater default, is only liable for ordinary neglect, & is not liable for casualty. But in Southcote case it is holden that if the article is stolen, the bailee may not take. Mr Gould thinks the position of this clause is correct. for he may be liable for ordinary care, which the jury must infer from ordinary care which the jury must infer from proof. This is contrary to what Lord Holt says in Coggs & Bernard, & also to the rule laid down in another case: But he thinks the jury are only ordinary care. The jury are to

a Show. 3d. Salk 281. 1 Ld. Raym. 282. 1 Com. 185.

4 Co. 83. b. Cro. Eliz. 816.

2 Show. 3d. Salk 281. 1 Ld. Raym. 282.

Ld. Raym. 916. 1 Salk. 282. 2 Show. 3d. Salk 281. 8

has an interest in the thing pawned which
arises out of contract and is bounded by the pawnor
Exc. 2 Ex. 239. C. in. 244. R. i. t. 672. 4 B. 83.[835]

But as an intrusted, the pawnee cannot le-
gally use the pawn, else he loses title in case
Ex. 2 Ex. 239. Sal. 522. 2 Stra. 917. Ld. Raym. 912. of loss pawnor; and if the pawnee retain the thing
after tender of payment and demand, he ceases to be bailee
and is liable even for inevitable accidents
and injuries. But if the pawnee uses
Ex. 2 Ex. 239. Sal. 68. 2 Stra. 917. Ld. Raym. 912. 1 Bl. R. 645. 3 Wils. 18. 6 Mod. 22. 6. Bac. Ab. Bailm. E. 2. properly keeps over Power or Equivalent
it, if the act known: as if the pledge is the pawn
if after tender or payment the pawnee should retain: ie if the pawn
continue enough to answer the debt.

Sal. 522. 2 Stra. 917. Ld. Raym. 912. 1 Bl. R. 645. 3 Wils. 18. 6 Mod. 22. 6. Bac. Ab. Bailm. E. 2. According to the current of authorities,
pawnee has not the general or lender is an
insurable interest at Com. Law; from regard
to their politics in Parliament — from which the
Ellen case has it seems lender there is a se-
parate interest insurable to the extent
of his debt to be had. By decisions the
pawnee or lender may sue in his own name

Endorsed

the pleadings and the pleadings have ought
to the issues and the Jurors to take that
is left by such pleadings and in finding
the Verdict for the Plaintiff must allege that you have
always been ready and are still ready to
discharge the debt

In Debt upon the Statute of the
Bridge, and it plead he owes not: where he
has a debt to the King by Record
or Specialty there is no effect in it. And that the Con-
dent is presented or not as the Bridge is
subject to be made better or worse or not shall
be affected by it. Then Leveling &c are
not injured at all to us yet it is said that
the Judge may stand at his peril and ordinary
case will not excuse him. I would think
this is a very strange rule since the Jury
are sworn to give the truth. The truth
in the case of the Levels is found in favour
of the Defendant. If the Plaintiff is
to recover the Judge he is up to be
imbrued

B. Bac. Ab.
Plea. 2 & 8

2 Bac. Ab.
2 Roll. Rep. 6. 7.
1. Sid. 127.
Cro. Eliz. 572.

Bailment

In Bailment there can be no property in the Finder
for here by Abd. the Finder of goods has a right
upon them, and the owner is compelled to
pay the expence and trouble of keeping: hence
as both are benefited — according to the com-
mon rule, the finder must use ordinary
care and diligence — If finder loses the
goods or they are stolen or they wear off the
value, he pleases, then is not liable for
this, because a question, whether the finder
can in any way possess for his trouble and
charge ag.t the owner. If he can it must
be in the action of Indebitatus assumpsit
for Quantum Meruit the finder is entitled to
recover: for he might this action for money
laid out & incurred on account of the
goods for which he could recover
a reasonable satisfaction and payment
for his pains & trouble, & if he has
saved the goods, or they are restored
to the owner, he should be paid for it, & has
a lien on the goods for his charges &
expences but for such alone, not for
debts: and he is only to a reasonable
extent

Bailment

that if the finder [illegible] he is liable in an action of Trover; but the unlawful use is a conversion, and there is no necessity for tender or payment. 5 Co. 297. Com. 251-261.

Lord Holt says that the distinction applicable to finders, and so to the finder of goods. Lovelace lays down the same rule and says that the finder of goods is bound to use ordinary care and diligence and is liable only for ordinary neglect. Mr. Powell thinks too that the finder of goods should use ordinary care.

It is said in Co. Litt. 2 b. that the finder is not obliged to keep goods safely, and is not liable for neglect. Now, if in this case the word, meant, that Trover would not lie, the principle is correct. For Trover will never lie for non-feasance. But if the Court meant that the finder is not bound to use ordinary care they were certainly mistaken. Co. Litt. 89 a. 2 Bac. Abr. 617. Com. 220.

That Trover will not lie for non-feasance see 4 Dig. 599. Bac. 243. Sal. 665. 1 Bac. Abr. 824. Holt 257. 8 Co. 146. Fitz. 89.

Bailment

In Gen. Law there can be no property in Goods to here by Abd. the finder of goods has a right against them, and the owner is compellable for the expence and trouble of keeping: hence as both are benefitted according to the general rule, the finder must use ordinary care and diligence. If therefore the finder of goods, not using such diligence as he ought, loses them or they are stolen from him he is liable to the owner. Hence arises a question, whether the finder can in any way recover for his trouble and expence against the owner. If he can it must be in an action of Indebitatus Assumpsit. At Law the finder cannot, but in Equity he can. It is said this action proceeds upon a mutual undertaking and promise of the parties for which a valuable consideration passes, viz the one undertakes to keep the goods and the other promises to pay him for his trouble and expence. But this cannot be good in point of law, for such an undertaking is void for want of mutuality, and there is no consideration to support a promise.

Plaintiff

[illegible] the [illegible] of the [illegible] to [illegible] obtain
they will not [illegible] a [illegible] and [illegible] that a
[illegible] given the [illegible] to [illegible] use the
[illegible] to the true [illegible] not [illegible]
[illegible] but [illegible] prima facie and will be con-
clusive if not [illegible] The true owner
must give [illegible] and sufficient [illegible] Sept 9-1890.
[illegible] that he is the [illegible] that is [illegible]
the very [illegible] [illegible]

[illegible] Chandler [illegible] then [illegible] [illegible]
[illegible] left [illegible] and [illegible] [illegible] and [illegible]
[illegible] after [illegible] [illegible] [illegible]
[illegible] his [illegible] and [illegible] [illegible] to the satisfac-
tion of the [illegible] by [illegible] letters: [illegible]
[illegible] [illegible] [illegible] in the [illegible] [illegible] and
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Sept 9-1890.
the [illegible] held the [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] a [illegible] and
[illegible] [illegible] the [illegible] of the [illegible] [illegible]
[illegible] the [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

Parliament

Greenleaf

a covenant agt the principal. The factor
is never known to the buyer, which he him
self has been in the practice, and he is
not to transfer it. he cannot transfer
it to him, so that if he sell the goods of the
principal, yet the buyer is liable agt
himself. He may, when the principal
pays a general balance, and if he has given
him credit by the principal & he pays
what he has received will entitle the prin
cipal after request, to sue the factor in
trover. The factor may sell in his own
name after the day of payment for their mutual
benefit, & the buyer cannot set off a debt due
to himself from the factor, nor the factor
set off a debt due to himself from the buyer
against the principal, but the buyer may set off
a debt due to him from the factor before notice
that the factor sells for a principal, & the factor
may set off a debt due to him from the buyer
before notice that the goods belong to a principal
& the buyer may set off a debt due to him from the
principal before he has paid the factor, or before
he has had notice that the factor has not paid the
principal. If the factor has a lien on the goods
for a balance due to him from the principal, he may
set off that balance against a debt due from him to
the buyer before notice that the goods belong to the
principal, but not after notice. If the factor has
no lien on the goods for a balance due to him from
the principal, he may set off a debt due from him to
the buyer against a debt due from the buyer to the
principal, although he may have had notice that the
goods belong to the principal, when the debt due to
him from the buyer accrued before notice that the
goods belong to the principal, but not if the debt
accrued after notice. A factor del credere is one
who undertakes for a commission, to guarantee to his
principal that the buyer shall pay for the goods
bought of him to the amount of the credit given.
Such a factor is not a surety for the buyer, but
he undertakes directly with his principal that the
buyer shall pay for the goods bought of him to the
amount of the credit given. Such a factor is not
a surety for the buyer, but he undertakes directly
with his principal that the buyer shall pay for the
goods bought of him to the amount of the credit
given. Such a factor is not a surety for the buyer,
but he undertakes directly with his principal that
the buyer shall pay for the goods bought of him to
the amount of the credit given. Such a factor is
not a surety for the buyer, but he undertakes
directly with his principal that the buyer shall
pay for the goods bought of him to the amount of
the credit given. Such a factor is not a surety
for the buyer, but he undertakes directly with

Bailment

Law of Bailment, after the Judge's Charge
Com. Dig. 1 Bac.
1 Bac. 239. Co. Lit. 244. Yelv. 178. 5 Mod. 60.
1 Bac. 238. This Power is Executable, by
Law and Authority, which hold all the
Parties and those Cases Ought, concerning the
Correct Effect of the Law of Bailment, he has
only a Duty, which Contract the Transferee
and this is a Rule, that a Bailment cannot be
Executed by any Agent of the Bailee: i.e.
his Servant in the Bailment cannot be Executed
and the Reason is, that he cannot Transfer
it, according to Principle, that he cannot Delegate
and that he can Execute by Contract
Again the Interest if the Power cannot
be Taken in Execution by Debt, it would
Com. Dig. Then he could not Sell it, to Secure a
Debt. But on the other Hand the Power
may Execute the Power and be Agent of
Com. Dig.
Yelv. 178.
the Execution. There is a Case by
Common which Seems to Prove that the Bailee
may Assign before Jury. But
2 Mod. 69.
Co. Lit. 232
on

Gaillard

in that case the assignment appended before
pay day, and the Bill be drawn by the
Person who bought the pay-day: the
Court have refused the Bill unless the pur-
chaser have left the assignment
with the Seller. Because the Seller
to the Bill was not bought till after pay-
day. The assignment bought locally, in order
before & the Drawer appointed after.

It was also held, Secondly, that the Plaintiff
should be allowed at the Drawer time, the
Drawer was, was [illegible] the Drawer was to
carry to hold the good - But it was held
by Lord Ellenborough, that the Plaintiff was
entitled to recover, for the Defendant
ought to have paid the Bill when it was
presented - for the Drawer ought to
be ready at the Drawer's Office to pay the
Bill when it was presented - but the Drawer
is not bound to pay the Bill when it is
presented unless he has received
sufficient Assets from the Drawer. But it would
seem to be the Duty, and the Interest of the
Drawer to pay the Bill, when it is presented
without waiting to receive Assets from the
Drawer

If the Drawer should be in insolvent circ-
stances

Gentlemen

Tho' the Crown cannot take away the Liberty at any time for Debts by due Consideration

A Grant of Soil without Liberty of Fishing is void

Fishing in right of the Owner

c. 5 Co. 95.
Ep. Cases
2 Roll. 30.

If one seised of a Piscary and Fishing and another having the Soil dig a Pit near adjoining it, if it be proved that the Water came by Percolation only, it is lawful

Com. 258.
3 T. R. 244
Yelv. 128.
Cro. C. 29.

The Owner of Land in which one has Liberty of Fishing may use it himself and all his Family, Guests or Servants, but may not licence

If the Owner before by Deed granted Liberty of Fishing to a Stranger, without Clause of Distribution, he may grant to the Grantee Leave to fish with a Servant or Friend, and the Grantee may assign it to the Stranger, still he cannot assign the Privilege to a Stranger

Com. Dig.
Grant. C. 17
Yelv. 178.
Cro. C. 61.

But if the Grantee has declined the Privilege to the Stranger or a Servant or Friend of his own, before the Grant the Grantor may grant the Liberty to a Stranger

Yelv. 178.

2

or when it is payable before that day: If they are assignable either must be made to the stranger: if not to the drawer &c? then there is no day of payment fixed and the promisor does not become owing his life time his Exec? cannot sue again after his death. If the day of payment is after the death of the promisor payment shall be the right of plaintiff: and his Exec? cannot sue.

St. 1. J. 29. C. 3. Salk. 126. Com. 239.

St. 1. J. 29. Com. 239.

V. The 5th sort of Bailments is a Delivery of things by the Bailor to the Bailee to carry from one place to another or something else to be done with or about them for a reward to the Bailee.

This sort of Bailment, whether it relates to the mere carriage of goods, or extends further, requires several distinct considerations: 1. As to the reason of the Bailment, whether it be for the benefit of the Bailor, or Bailee, or both. 2. The

distinction. Goods often will be considered
Private Bailees, or Professional as the
Case may happen: Gratuitous Bailees
are those who keep goods for a friend, or
some other purpose without reward: The Bailee
is not liable unless there is Gross Negligence
Factor, Agent or Servant: Is also liable for
Goods delivered to a Carrier to be carried
safely & securely

The Bailment is beneficial to both
parties: hence the bailee must use only
ordinary care. The bailee being liable
only for ordinary neglect for is not liable
for Robbery. The bailee is bound to take
Care, for this he may be sued by showing
that he has used all ordinary care and attention
Goods may be the bailee's own but he
retains the Property the Bailee's Risk: the
is ordinary Pledge

And before the property is taken by the
creditor of the bailee detached effects should
not be by the bailee: the bailee
or the bailee's property should not pass
to

Jones Bailments
2 Bac. Ab.
1 Bl. 431.
Doct. 523.
Bac.
19 Ves. 248
Jones 120 & 130.
135

2 Bac. Ab. 618.
19 Ves. 248.
Jones 120.
Bac. Ab. 625.
Jones 124. 133-8
Bac.
Bail 4. 62 &
Bac. 4.

Jones. 111. &
Ch. 62

Jones 125
& Jones 130.
Ch. 62 & 63
Bac. 125

the boiler coils - Fifthly and Lastly power to
another to perform some act of skill or
work on them for wages are similarly
2. That the latter shall again be restored
2. 3. 93. 3. That the latter bestowed shall be one
3. 4. 93. 4. 93. chattel. And a failure of either of these
Geo. 3. 93. acts the boiler may have an action
Geo. 3. 93. the boiler. But when the act or skill
was part only of such bestowal there is no
implied wages there may be a lien
for some. Thirdly, That a Steam boiler shall re-
pair the parts of the machinery
are left in fair & sound state. Thirdly
Lastly, may be stated that the
Repairer on the wages of the place and that
the boiler must be brought & removed in
like place where given & secure
and charge the procurement of principal but in like place where wages
must be given & must be offered
But despite the power left in factory
after

Carter ent

after this are given under letters the use
obtained through means of that case which
the law requires of the broker and the seller
secures for his labour which may be 3 Geo. 4 c.
five days more left. The Broker therefore, he 1823.
earned for his labour is of no benefit to the
broker, nor further if ever he sought the Land
of the seller, for it by the negligence that
the goods were destroyed and in this case
he gave, and left his ordinary profit
2. Goods Entered to a Public
Garrier or to a known forwarding
a Public employment in professional
character as Proprietors of Ships, Lighters
&c. The most usual Class under this head
is Common carriers and of them we will
first treat more particularly.

A Common carrier is any person who
makes it his usual business to transport
goods from one place to another for hire.
and differs from a private carrier in
that the latter only acts at his own

Lofft

Bail bond

Bailment

common carriers, their duty became more rigid and it was determined in the time of Eliz. that a Common Carrier should be liable for Inev. - Cro. Eliz. 486. 1 Roll. R. 2. Bac. Abr. 342-5.

Inev. - Cro. Eliz. 486. 1 Roll. R. 2. Bac. Abr. 342-5. Held, now it is settled that a common Carrier is liable for the Loss of goods except occasioned by the act of God or the Queens enemies. The Case only the act of the Bailor himself. These are the only grounds which will excuse him. Public policy and this rule has made these exceptions to the general rule. Salk 198. 1 Salk 282. Ld. Raym. 738. 1 Ld. Raym. 271. 6 Mod. 26. 1 Show. 95. 3 Lev. 264. 12 Mod. 487. 1 Comyns 31. 2 Ld. Raym. 909. 2 Salk. 440.

It may be observed that the Bailee can sue in Trover and Case and Detinue and Trespass. If he has a Special Property in the thing bailed he can sue in Trover against all wrongdoers, even the Bailor himself: and if any other person takes away the goods from the Bailee, the Bailee may bring Trover against him. By Act of Parliament in Scotland a Bailee is not answerable for Inevitable Accident or Force. Such an act is

Bac. Abr. 342-5. 1 Roll. R. 2. Cro. Eliz. 486.

Evil-eaters

Taken by the interested spectators

Fine occasioned any other than the

by prohibition is not because the mother

or any unlawfully received - 1 H.C. 31.

2 P.C. 96. 18 Esp. Dig. 96. Dyer. 6b. Stanf. 18.

By this statute it was recited

that where persons were put in the

stocks of the Common Gaol in the

City of London

& the Common is not guarded when the

key is received by the

for they are not common public servants

Chalk in the high Road are public and

roads: but foot-paths, gates, posts &c

inferior things and ornaments are not public

servants but Petty Larceny.

If a servant should make a fraudulent

return goods over to the owner & receive

in one case where a box of jewels were

given over-board the Carrier was freed

from their value. But this was on the

ground that he was compelled to

their

C. L. C. 93.
Bac. Ab.
Com. Dig. 8

Ventr. 238
1 Sid. 78
1 Mod. 85. 95.
Hawk. 96.

Bac. Ab.
2 Salk. 655.
12 Co. 63.
2 Salk. 655.
Com. Dig.
Dalt. 96.

Parliament

[illegible] on the terms in question. But this is not always so: for if the master has never seen the terms, or known their contents, the bailee should be liable.

A master of a stage-coach who takes in passengers and not for the luggage is not liable for the loss of it, (Com. Dig. Action upon the case for Negligence (A) 5. Bac. Abr. Inns (I) 5.) if he did not have it for the benefit of the owner, but the passenger himself: but if he did have it for the benefit of the owner, the master is liable as common carriers though he may be in some other character.

It is not necessary, in order to subject the bailee that he should have received the goods before he carries the passenger: it is sufficient to prove that the bailor has delivered to him the goods for the purpose, and he has undertaken to carry them, though he has not yet received them. Neither is it necessary in order to subject the carrier that the goods be left in his custody. For if he leaves them on the spot where the bargain is to deliver them

6

Recitals

If the Consignee, be liable if things are left before the Consignee shall know – i.e. if a Waiver for Carter. But if the Consignee does not know time at one time and they are to be left before the Consignee gets there the Carrier must, with due diligence, & if there is a Custom either they may be sent from Dover into Normandy or the Consignee, direct by whom the goods shall be conveyed to him, he must not the Consignee, must for the Carrier. If the Consignee, direct the Carrier, he must the action being. But if the Consignee waits and the Consignee makes himself liable for the risk, either may bring the action. And so, Price versus

All the means of a Ship must be found so Consignee when they are sued & [illegible] they are liable given as Consignee. Consignee to Tate. The Consignee may be guilty for but but the Owners having a fleet cannot. But when fine of the owners are not found

(Ref. to Mr. [illegible] [illegible] [illegible])

Chelmsford Connecticut Aug 24th (about 1811) Cold windy Weather (Wind) Monday Dec 31st 1822 pretty much the same – also freezing cold, Chelmsford the Cold

Parliament

joined as Defendants, and an Inquiry cannot be taken out by them in obedience to the Writ formerly. As the Post Masters not being liable, under the Master and Servant l. Vol. 1. Ld Raym. 369. 6. Mod. 127. Post Master, was a Civil Service Act by Stat 12 Charles II. King are made Officers of Government, and consequently cease to be liable as Civil Servants

It is said in the Books that Bond Causes are liable on the Civil Custom of the Realm and the general mode of Pleading is on this is however an 1 Bac. Abr. 350. 1 Vin. Abr. 33. Hob. 18. Jones. 130. 3. Mod. 244. Hard. 485. 1 Sid. 265. greater: for general Custom, is but another name for Local Law and you might as well plead any other Custom, as this

The action brought is an Case, and not Trover, for there has been no conversion but only a parol Pleasance. The special action in the case may denote a delict or a contract, whether he was guilty of a misfeasance or not. Trover will not lie

Sal. 655. Holt 25. 1. 3 Lev 282. 4. Ld. Raym 3

lie for a non-feasance, though it will for a mis-feasance) as Delivery the goods lending upon Contract (3 H)

The Delivery of Goods in pursuance of the Contract of Bailment (3) (Vide the Delivery of Goods to a Servant employed to take charge of his Master's Horses) a Public employment to have some other name with a short time for a Servant

Genesis 39. 4

VII. This kind of Bailment is called "Mandatum" and the person to whom the goods are Delivered is called the Mandatary. This differs from the last kind of Bailment where the Bailee has no power. The duty of the Depositary is merely custody, he is to keep the goods: the duty of the Mandatary is to do something to the goods. As this Bailment is gratuitous and only done gratuitously for the Bailor, the Bailee only undertakes for Gross Fault (3 H) in practice there are certainly some Distinctions in particular cases: thus, one person

pays

Bailment

recognized in the case of Coggs and Bernard L. R. Ray, 913 Smith's L. Cas. 6th Ed. 180 1 Salk. 26

But when a Mandatary, agrees to keep Thing with due care and shall he mistake himself in the, but it is on his voluntary stipulation, not as Mandatary.

This was the precise case of Coggs and Bernard: in that case, Lord Holt gives the proper example to many and others Bailees safely. The Bailee was not charged with fraud, but with negligence.

A question has arisen, whether an express promise by a mandatary is binding on him as a

Neglect. Every neglect in one case is the same as in another, and Lord Loughborough is reported in Doorey 6th vesey) he says it seems that a distinction of gross neglect for gross is stated in other cases the same. (West, the question of what amounts in general

use

nor in the regulation of their affairs.
The mandatory, then, for the Executor, Trinity, is liable in his Contract whether he receive any and are not liable on the ground of profit
The difficulty, here, has been on the ground of no consideration. But Lord Holt says the Action itself, is a sufficient consideration: for if the Bailee, does not use
[illegible] as he agreed it is a disadvantage to the bailor & this is a consideration enough in every bail
ment. Jones says that the duty of a bailee is greater in case of pledge, than in the case of Factory: because the nature of the thing implies it: and because more care is necessary in carrying from place to place than simply to keep. He says that the liability of the Mandatory is greater than that of the Depositary: But this Executor says is incorrect, and that there is no judicial Decision to this point. But it is evident that where there is the highest degree
of Care the Mandatory is never liable beyond
gross

(Bailment)

grato- neglect; though Jones says he is
another to refined idea in Jones is
that a Bailment is where one place
to another without hire; is Differenced from Jones 4to
a Covenant to labour without Reward.
(Where the act to be done is in the Line of the
Bailee's Profession he is liable for a breach of
all necessary care: But this means all
that is necessary in the Generality of the
Cases, and not in relation to what
Persons will generally agree to take of others.
So a Taylor engages to use all necessary
care in Conformity to Rules, but this does not
extend to the Negligence, &c to the Carelessness &c
in Misunderstanding as to the Fashion he is to Pl. Rep. 270.
Reg. Lib. 99.
follow) His engagement does not extend Cro. Eliz. 4
to Losses occasioned by the Servants he is liable
(unless he is Bailee) if such Servants act, and who
rules he has used Due Diligence)
It is to be observed that the Liability may Another sort.
be qualified or limited by Agreement; for
neither the Commodatum nor the Locatio and

except Bonds given upon Arrests made by any Officer upon Mesne Process and such Bonds entered into are contrary to Law

Some Proposed Rules to be Practised in Parliament

1. That the Bailies here in Scotland and Lords of Session called Lords of the 1st and 2d Class of Parliament for a Time, or during Life or Pleasure or Lords Ordinary by Vote of Parliament (which Vote not exceeding all of the Number of the Lords of Session) because the Act of giving Votes giving a Vote upon Trust or a Power to the Lords of Session — The 3d Class of Bailies have a Vote because they are to have Votes in the Choosing Barons to Parliament and the Vote in the 3d Class is exercised only by Virtue of a Qualification implied by Law that the Sheriff Depute of Clackmannan and Kinross shall have a Vote in choosing those two Barons to Parliament

Bailment

sufficient to satisfy the demand (if demanded)
lien exists in favour of the Bailee; & the
goods are therefore lawfully & properly
from the bailee, cannot take them, subject
to this lien: nor may any be demanded
without tendering to the bailee the amount
due him. Even where the objection is
illegality, for here it could be accept-
ed & tendered in order to be paid. Even
when no assignment of a debt may
may be divested to a third person, the
debt, existing of the bailee. 9. Bridge goods
to be sold to be paid in 21 months.
If there was a lien upon them and com Ead 365
paid them after. but if they should 2 Ph 485
come into the hands of the owner
or other person the second could
claim on the principle that the
lien is not assignable.

A Com. Factor has a lien on the goods
which he carries even if the goods of the
owner wrongfully taken by the owner from

to

to a Carrier for transportation, and he-
dies, tho' not then he may retain the
goods both agt the bailee and owner:
and the rule is the same if the goods were
stolen not given to the Carrier: he may
retain till he is paid for his trouble: the
reason given is that the Carrier by law is
obliged to carry the goods: but this would
seem not to be the true reason: for he may
insist on his pay before he transports the
goods, though it is not customary to pay in
advance. An Inn-keeper may retain
the horse of his guest for the horse's keep
though not for his guest's keeping: But he
may retain the person of his guest till he
has paid all his bills.

The rule as to Carriers, applies also to
Innkeepers: if any horse is stolen and put
into an Inn-keeper's stable, he has a lien
on him even after the owner

But if the Inn-keeper voluntarily lets
him go, even for a moment his lien is lost.

for

to pursue them: but the true reason is, that
Commerce and Trade do not require it.
The Master of a Ship has no time upon the
high seas; for his Business is to the Ports
to which he is destined: and the Owners
Interest is not to his personal Convenience
We have been speaking of cases, where
the law implies a Lien: but in any case
a mere naming gives a Lien. ie. a Lien may
be created by express stipulation where the
law gives none, and in the other hand a
Lien may be waived by express contract
where the law implies one: for the law will
not imply a contract where the parties
make one: So where a Factor takes a
Ship to one kind of Goods, and the
Owner expressly stipulates that it may not be there
may not be used for those purposes
express agreement of the Parties to
contrary. So where by a Lien implied by
law on the goods, the Ship is not liable
a personal but also for a general Balance

But

But he cannot transfer his lien to another: nor can he create a new lien in favour of another, unless good: for his legal is strictly fiduciary and this is true of all bailees.

5 T.R. 644
Str. 1085
M. & S. 362.

The bailee of the first kind, has no lien: for he has no compensation. But the bailee of the 2d. kind for he is bound to do it: in the article to demand. But if an article is bailed for a limited time, the bailee may retain it, till all the time is expired, but this is no lien.

A bailee of the 2d. class may retain the property during the time for which he was hired: but this is no lien. — So a common carrier or bailee of the 3d. class has no lien: for he is a mere volunteer and receives no compensation —

2 Str. 1085
Bac. Abr. Bailment (H)

You will be considered the Bailment of property, by those who do not claim it.

One who is a 3d. class of bailee, is not responsible absolutely, or has an obligation

objected to the Bill of Sale for not stating it
in the manner prescribed by the Ordinance and
it was held that the Purchaser
cannot only being generally bound by Lease
properly executed having Notice to give
good credit to the Assignor and to Indorse
false Entries in the Books in his Favour
If the Assignee, and the Assignor cannot
object, but under the Act of Parliament
[illegible] the Assignee, in virtue of the Act
the Assignee in the capacity of the Creditors
[illegible] is not precisely to be considered as the
Agent of the Assignor, having only a title commu-
nicated with the Act of Parliament, ought to be
considered here? But this point is confined to
the original Sale: for if the event of the
Creditors petitioning be communicated with the
Seller of Sale to whom the Deed is Conditional
it is not of course Cancelled: for by the terms
of the deed the petitioning ought to stand
for the Creditors is performed where the
Assignee obtained had the Sale [illegible] is
[illegible]

Parliament

is published then in a public office within the
time after from the date of the proclamation
immediate publication, and not be given as
of a Writ is made, which shall abate. In this
case the Lord Chancellor ... Bill shall be made
to the Clerks of the Upper House of the
Acts to make such an order, and
Commissioners shall be appointed by
Lord Chancellor before it be an affirmance
of the Court, and if an affirmance of the

Judgment

in the case of Edwards and Haselden & Ors
Edwards & Ors. Mr Gould thinks it only a case
of Trover and by the decisions in Fenwick
and Lord Falconbridge in the late
case of Doe and Lewis upon evidence
the institute of the case of Edwards and
Haselden the Lord Chief Justice
ruled that it was only a case of Trover
and Lastly there appears to be a fraud
committed the question is now before the
Court of Equity

Another Exhibit exhibited by Mr Lowndes
seal of a Commission to take the proofs
in the proceedings after mentioned to be
taken abroad which must be annexed and
belonging to the Commission and may be
taken for his acts. This Seal extends to all
cases where the Commission has proceeded
to the examination of witnesses
Lord Ken to be annexed which is done
the case is annexed the order of Court
by which Lordship has a right to take the proofs
in

Parliament

more rational principle it has obtained
esp. of late of two coincident proceedings
Either by the bravery of another the one may
enable him to do the wrong should be the
Offender. If goods are sold for hire to be
used by the Bailee a certain time by a
certain mother the Bailees creditor can
seize the use in execution. Remedy given
from a dictum in this case the Reasonable
Later: But in Scott v Bernard Lumber
on which account pay from the Bailee
Construction Jobbing Business a Capital
Expedient. If Bailee a Jobbing Master
& mortgages for hire and his creditors take
them in execution for their own Debts &
seize, and the Sheriff in Power
to be maintainable. There is a distinction
between Bailments for Profit or real
things and a personal chattel. It may
be willing to make his own profit
analogy drawn in favour of this Case
in Law for a Person for whose use

Claim

. Doug 72.
2 T.R. 30 5 pp.
1 Ves. 360.

1 T.R. 1-12.

Endorsement

[illegible] [illegible] [illegible] [

Testament

or construction possible during the time of the injury. A construction obtained in spite of present probable circumstances will be valid for a limited time, the testator can not give his property to a stranger for taking them away during their absence. Because for the time the law no right of property

If the giving of one person while the property of the subject of a nation are given to a person by the hand of the subject of a king, and a stranger after such taking, and a king's time the [illegible] of the subject, the ground for because the [illegible] actual or constructive [illegible] in a part of the property of the [illegible] title. If [illegible] will cannot be obtained: a title obtained by a king or a [illegible] of the [illegible]

If a subject gives a thing of property to a stranger the [illegible] cannot [illegible] rights in law until [illegible]

Bail-court

for and put in the Land the Jew and of the
Peace and Seal of his Corporate Liberty he
has done some Misfeasance, the Liberty
Commenced. But if the Party so delivering the
Property & the Bailee dying, or before the
Deed the Action dies.

Bailee may One in Trespass or Trover for
Goods taken, from a Stranger. There is some
question as to a Debt Land and Contracts
and. The Property of the Bailee ought to
maintain an action is plain to be his own
Liability even to the Bailor: hence it has
been questioned if a Debt Land or Tenancy
may suffer a Recovery executed cum
maintain the action. But Mrs. Fields
Case, any Bailee, even having the actions
of any person who takes the goods out of
the Bailee and the Bailor against Every
Bailee has a Special Property in the
Goods Bailed and so the Law will pre-
sume him in the enjoyment of it
& if not settled till a more Lenient

Bailment

may have his action ag[ainst] the owner
of the goods as taken from him: but
a finder's interest is not greater than that
of a Depositary. Upon it is settled
that if a Servant [illegible] any part of
his master's goods he may
maintain an action ag[ainst] the Servant:
under the Sta
an appeal of Felony ag[ainst] the Master
himself. and yet the Servant is bound
even in that case to his Master. the distinction
between the Master and the Bailee
is that the Master may at any
time [illegible] Bailee has a special
interest being qualified with a power
to dispose of it. [illegible] the Bailee
[illegible] a Lease. So if the Lessee
[illegible] Lessee for years. Lessee may
[illegible] an action ag[ainst] any one who
[illegible] the property. A Depositary may be
[illegible] to the Master for the wrongful

Stra. 505.
Yelv. 29. 38
Sand. 380.

1 Lev. 169.
Hardr. 485.
Comb. 463.
1 Ld. Ray. 646.

Ld. Ray. 646.

1 Ld. Ray. 738.
Salk. 284.

(Continued)

Parliament

may be and I have power and Prelate
There is an Elder power of God like to the
Centurion. The Regard of the Father is his
special Protector. The value of the Divine
Nature is not by ground of Heaven but the
Lord of the way - Power and Prelate be al-
ways for the Best Value: Expose the way be-
mage may be, mitigated: to thy Immac-
ulate Ishy being it can
Name how and other article: It is Comple-
ted to give the whole Universe - Re
fect of Glorious is not the Predestination
cannot plot the true value, yet he Put in
circumstance to prove the value -

4 Ps 111 If the Father values our prayers, how
v 10 can we bring to the Father's ears, the Father
may bring Power for to a Covenant
and in this one we become in unity
(us)

Paribonard

Contents

Laws and Public Acts, &c. &c.

Gradement

Parliament

Jan[illegible]

Bailment

Parliament

Every State has a State Legislature, Con-
stitution, but where the Con. Law has
not been altered or [illegible] the same.

In Scotland no person can open a Parlia-
ment but the Queen's Commissioner who
is appointed by the authority of the Crown
and appointed to the Scotch Crown.

In 1707 a Union the Charters of
the Kingdom of England & Scotland were Volume 5, 8.
ratified to the Articles of Union.

Laws by which Assembly can Amend Scotch 58
Public Business. 20-
H. 18.

Laws pass of the Queen & Estates
the Act is passed. If Parliament (Scotch
of a Lake the Crown the Act is 5, 10, 12.
Public. Kings Treas. nothing received in
by Parliament.

Contracts

Contracts

Void for inadequacy

Void for inadequacy not exercised under the English statute of Queen Elizabeth to relieve a person for another who has the use of the latter's property, the former's property and the property of heirs and assigns.

[illegible] to [illegible] a [illegible] [illegible] [illegible]

Extract

Contract

Void and Voidable

for and the whole debt, for the Slaves will only make that part void which is unlawful and the rest of the contract will remain good. As the Slaves contract cannot be affirmed

Every suit to the Slaves when they are free the same as

Slaves will not create confusion contrary to order and of the parties is right as such to be general

The action of fraudulent debt and account are brought on void contract

After considering the nature and kind of contract, he will be considered the various kinds of relating to enforce in void contract under which fall Debt Account void Account shall be made, and the same to be made by him under which fall the actions of Assumpsit and Performance Under second void satisfaction account as a release

Contracts

Contracts

1st Contracts with executed Executory
each void at law in any case. So held
this is a long known & established
rule in proceedings
Courts of equity frequently enforce
a decree by this writ issued such as
when directed by a long continued
habit of acting & by decrees with
this are enforced in favor of
a party who can enforce them
by the other contracting party. where
[illegible] and it will there
are a great & [illegible] of [illegible]
of [illegible] from a decree in favor of
a party who [illegible] & [illegible] the same
decree will [illegible] ought to have
the same effect in the courts
Breaches of executory contracts
or [illegible] sufficient to
[illegible] enforced from being enforced
other

Declaration

Declaration of Trust

Declaration of Trust

Declaration of Trust

Infants

Feme's Covert's

Contracts

Femes Covert's

Husband and Wife

Husband and Wife

Husband and Wife

Women may Lend
rents as well as
themselves by their
assent to Contracts

Who may bind others as well as themselves by their assent to Contracts

Covenants

Power may be given.

that he may absolutely be entitled to the Equity of Redemption notwithstanding the Mortgage money shall not be paid at the time appointed for payment thereof, no covenant for that purpose being expressed in the Deed of Mortgage, nor any Proviso for Redemption inserted therein.

1 Ves. Jr. 320. Cas. in Ch. 18. 2 Vern. 270. 2 Ch. Ca. 202. 2 Vern. 270.

And that the Mortgagee will at any time after the Mortgage money shall become payable, at the Request and Costs of the Mortgagor, reconvey the premises comprised in the Mortgage unto him or to such other person as he shall direct.

Co. Litt.

And it has been holden that the Covenant for further assurance binds the heir of the Mortgagor to convey the Estate of the Mortgagee in a sufficient manner, if the Mortgagor shall die before the money is paid.

Cas. in Ch. 100.

And it is usual for the Mortgagor to covenant that he will pay the Mortgage money and Interest on the days appointed for the payment thereof, and also that in case default shall be made in payment of the Interest on any of the said days, that then and from thenceforth it shall be lawful for the Mortgagee to enter upon the premises and to distrain for the Interest in arrear, and that he will keep the Buildings insured against Fire in the name of the Mortgagee, and that he will not commit any Waste upon the premises, and that he will produce to the Mortgagee the Receipts for the Premiums of Insurance, and that he will not grant any Lease of the premises without the consent of the Mortgagee, and that he will not sell the Timber growing upon the premises, and that he will not pull down any of the Buildings thereon, and that he will repair the Buildings when necessary, and that he will not cut down any Timber except for repairing the Buildings, and that he will not dig any Gravel or Sand from the premises, and that he will not open any new Mines or Quarries, and that he will not alter the Form of the Premises, and that he will not do any Act whereby the Mortgagee's Security may be impaired, and that he will not assign the Equity of Redemption without the Consent of the Mortgagee, and that he will not create any Incumbrance upon the premises without the Consent of the Mortgagee, and that he will not let the premises to any Tenant who shall refuse to attorn to the Mortgagee, and that he will not pay off the Mortgage money without giving Notice for that purpose, and that he will not pay off the Mortgage money without the Consent of the Mortgagee, and that he will not pay off the Mortgage money without the Consent of the Mortgagee, and that he will not pay off the Mortgage money without the Consent of the Mortgagee

Covenants

How essential may be given

Mortgagee. Where there is a subsisting covenant in the lessee, to be affected by it is necessary that he have notice that by express words or by implication, as where the subsequent one has also that by, silence he acknowledges a covenant into, by entered is not affected with it. Upon the same principle if the lessee

L. Ca. 165
L. Ka. 167.
Eng. 164.
Ch. Ca. 129
1 Ch. Ca. 202.

of a note which has been subsequently to give reasonable notice to the lessee he is considered as agreeing to the change the contract into that the lessee. And in general the law will raise a tacit agreement wherever it is necessary for the purpose of giving effect to the express intention of the parties

P. C. 33.
2 P. C. 30.
Eng. 63.
Ch. Ca. 15.

P. C. if one make a declaration, or by deed to build agrees that the lessee shall have the right and profit to take them away or be entitled to the benefit covenant that the lessee shall

How assent may be given.

Contracts

What circumstances invalidate an assent given.

Chapter 1.

What circumstances invalidate any Deed given.

Stat. 27 Eliz. c. 4.

Stat. 13 Eliz. c. 5.

Stat. 27 Eliz. c. 4.

What circumstances invalidate an Essent given

Contracts

Every written Instrument whereby any Interest in Land is created or conveyed, or any Power to dispose of Land is given, shall be void unless it be executed by the Party creating or conveying such Interest or giving such Power, or by his Agent thereunto lawfully authorized by Writing, or by Will. And every Instrument executed by any Person claiming as Attorney for another by virtue of any Power of Attorney shall be void unless the Power of Attorney be executed in the Manner hereinbefore required for the Execution of Wills. And every Will executed in the Manner hereinbefore required shall be effectual to pass Copyhold Estates and Interests, whether the Testator shall have any other Estate or Interest in his Lands at the Time of his Death, and whether he shall have acquired the Estate or Interest devised to him before or after the Making of his Will.

Every Contract for the Sale of any Lands, Tenements or Hereditaments, or any Interest in or concerning them, and every Agreement not to be performed within the Space of one Year from the Making thereof, shall be void unless the Agreement upon which such Action shall be brought, or some Memorandum or Note thereof, shall be in Writing, and signed by the Party to be charged therewith, or some other Person thereunto by him lawfully authorized.

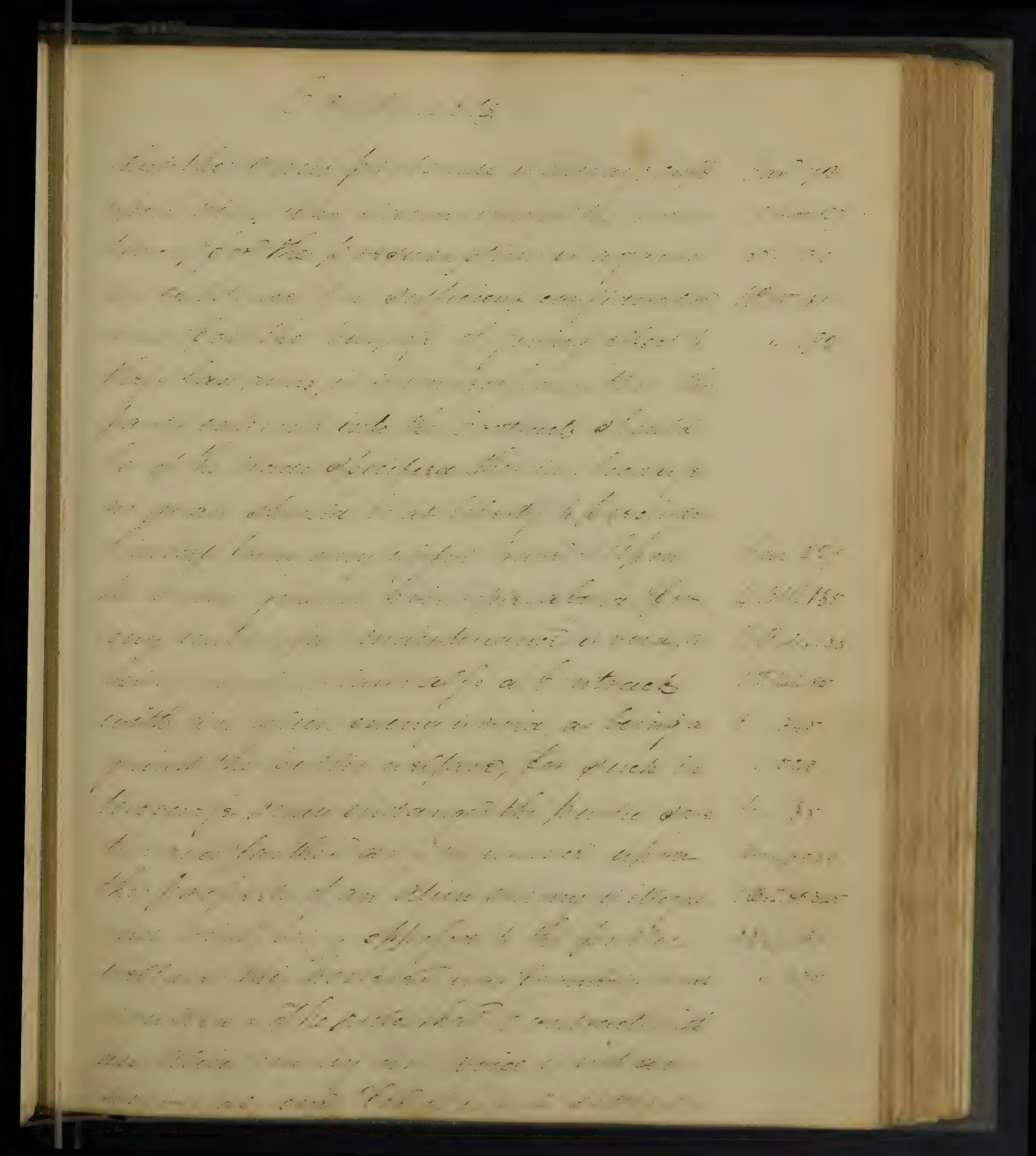
Sec. 1 Vict. c. 26 s. 3

Sec. 9

Sec. 4 Stat. of Frauds 29 Car. 2 c. 3

1 Kent 466 — ... not paid to the time he ... of
1 Bac Ab 229 — A made a lease of land to ... who
Com Dig 405 — ... assigned ... by deed to ... the
Salk 278 — to pass by the deed to ... title to the
1 Ld Raym 294 — land ... the time of the lease; it is the same
2 Wms 158 — rule in Equity
3 Keb. 310 — 3 Vernon ... Cases in Chancery

The person is not ... who
does ... and acts the party, in case
3 Keb. 310 — of his having ... a breach of ...
311 — before he ... in the land = No right
1 Sm L Cas 206 — can be ... or obligation entered ...
Cro Eliz 735 — a contract to perform what is ...
1 Com Dig 180 — impossible, and an attempt to enforce such
179 — contract or obligation would be utterly
2 Ld Raym 1085 — nugatory. However the law ... disregards
6 Mod 310 — between such as are ... impossible
1 Vent 349 — ... which are merely ... in practice
1 Wms 277 — to the party contracting for ... 2,000
1 Vern 515 — part of the ... time is ... The ...
... to depart out of ... between
... and ... paid ... in Barcelona
... Exchange ... to ...



Contents

Contract

Chapter 1

[illegible]

Contracts

2 Bac 349
12 Co f 89
36 f 233

[illegible] [illegible] [illegible] [

= Implicative Contracts are those

released

Chap. 79
Sect. 29

Contracts.

Title. 4 [illegible] certificates, one resolved only that the
Title. 6 proof of debt became an issue of the
Title. 53 [illegible] and [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
Title. 433 [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
Title. 6. [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

Section 1

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, that the Governor, with the advice and consent of the Council, be and he is hereby authorized to appoint and commission Thomas Russell, Esquire, Major General and Commander in Chief of the militia of this Commonwealth, during the pleasure of the General Court: He shall have a seal of office, and shall by the Secretary or his deputy, or one of the Clerks in the Secretary's office, duly attested, sign all commissions which he shall grant.

Section 2

And be it further enacted, That the said Thomas Russell, Esquire, shall, before he enters upon the duties of his office, give bond with sufficient sureties, to the Treasurer of this Commonwealth, for the time being, in the sum of five thousand pounds, conditioned for the faithful discharge of his trust, according to law, and the direction of the Governor and Council.

Contracts

Persons are not presumed to contract
or to be chargeable for an Excess of Power
to take advantage of any Statute to avoid
any Act done at the time of making the
Promise. Thus when on the Breach of
a Promise to marry it was pleaded
that the Plaintiff was in the Communion
of the Church of England; it was
held that the Promise bound him though
he pleaded, because it was void by
Statute 26 Geo 2 c 33

All Bonds Deeds & Contracts re-
ceived by the Statute to be void and
if a Promise made by one Person to an-
other for the sole Benefit of the Promisee
should be void for the Want of a Consideration
or Part of the Consideration, there is no Remedy
for this Clause, there is no Remedy made to be
particularly observed that if the Pro-
mise made by one Person in behalf of the
other it must be called an Original Pro-
mise, it is binding though it be by Parol
And if it be made in order to discharge

1 Roll Rep 108
Cro Jac 295
Yelv 105
5 Mar 1855

Contracts

collateral security given for the
[illegible] to which time security
[illegible] Bottomry
[illegible] and [illegible] and the [illegible]
[illegible] of which he will become security thy
[illegible] Collateral promise [illegible] to [illegible] 23.02.81
[illegible] merchant and [illegible] [illegible] 1968 no
[illegible] [illegible] thy [illegible] 2nd Bayne
[illegible] promise [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] 1st Bayne
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Contracts

A promise or promises which a law will enforce Salk 171
a duty. That he will perform or cause him to perform something to be done for the Plaintiff 5 Mod 395
benefit of the Plaintiff, which is called assumpsit, & may be either express or implied. Express that which is Cro Car 180
expressly agreed between the parties at the time of making the promise. Implied 3 Salk 16
is that which the law presumes every man undertakes to perform according to reason & justice, tho' he does not expressly promise it. As if A. sells goods to B. B. promises to pay for them, the mutual performances of which they reciprocally owe from each to the other is a sufficient consideration to support the promise. But if A. for a valuable consideration promises B. that if B. does not pay a sum of money to C. at a day certain A. will pay it, & B. does not pay it to C. at the day, B. may bring an action against A. for the money himself, for A. is liable to pay it to B. & therefore the promise of A. was original & not collateral.

For to make a promise collateral & void the party promising must plead that the debt of another for which he undertook was discharged by the act of the creditor himself before the time of payment arrived.

All promises by one of divers persons jointly are extinguishable, if not fulfilled by all of them: because it is not to pay the debt

3 Wend 315 Of a contract but this was the Genl
Rule in cases of mutual & dependant
Cowen 338 covenants or becomes an immaterial
Dumb. 37 one to be sued, defeated or recouped for
2 Pet 305 matter by which the breach of the other
3 Wen. 488 is likely to injure him. Ergo if a promise
New R. 10 & that if he will turn the land of B. he
Salk. 171 pl. 2 will pay him 100 and will do it in a
1 Str. 703 short time the promise is accepted and the
2 Bac. 305 land of the is by the contract the
promisee before the 100 is paid. If A. sells a horse
to B. warranting him sound & B. gives his note
for the price & then discovers the horse to be unsound
he may sue on the note. The true Principle of Original
promises is where they are given in consideration arising out of an antecedent
duty, and amounts to the promise of a reasonable
man, when a person on the loan of a horse
finds him lame or sick & thus prevents
the person from using him but this promise is
considered not to be a original Contract.

Contracts

therefore to be considered that a contract
between two parties, promising to pay sum
the first instant; they promise time sum
to become due in the case of failure and
consequence in this transaction, though by
some other time considered
as a promise to pay money only, but
seems considered it is in such a promise
to pay for the benefit of money because
I have an interest in the same thing the
right to require, which seems to be sum
money, power & money though as good as the
actual sum, not so. If the price been ob-
jected that it was not sufficient a promise
to pay the sum of 10 specifically: but it
is clear it was a promise to pay
sum for his interest, which seems not to
mean sum, by the sell of cent which is
interest paid: A promise to pay a certain
sum of money for the withdrawing of
suit, to pay it for an offered sum

Contracts

Contracts

[illegible] 3 Burr. 1350
a [illegible] 3 Burr. 1567
[illegible] 2 Wils. 94
[illegible] 2 Wils. 94
[illegible] 2 Wils. 94

Contracts

Contracts

Contracts

Contents

Contents

Contra

There is no question however as to the general rule, that a confession taken in pursuance of the Statute, and in the manner the Statute requires, is to be received in evidence against the party making it, unless it appears by the party himself, or some other evidence, that the rule of evidence: If the Statute: a confession could be received in evidence against the party making it, and if the subscription of the justice is not in the manner as the Law requires. There is another question, whether if the Justice should refuse or neglect to subscribe or record the confession, this may be affirmative proof against the party? But there are Cases which fully answer this question. The neglect of the party in the application, cannot prevent the person applying for it to

2 B. & Ald. 566
2 Hale 284
Hawk. P. C. Rob. on Ev. of Fr. 157
Dalton 65
Bac. Ab. Evidence (A) 3 Inst. 163
Dalton 65

power over pledges to be proved by
for examinds if a mortgage can safely be
to M. but the words continuing in force
of the bonds conveyed over may M. a bond
to the amount of the Consideration. A
deed must account to M. for the profits of
the lands pledged and but does not
in the bond. This fact being taken into
consideration, it has been held that the
Statute notwithstanding it is the duty
of the Court of Chancery to infer that it
was only intended between the parties as a
mortgage and not as a sale absolute
Nor are all other exceptions to this
rule, grounded on a principle that can
not admit of a new transaction
between such a Confederation as would
have a tendency to encourage than suppress
by any of them a practice which might
result from the acceptance of such
plea than even its performance or
so that the contract will be enforced.

Contract

Not be injured, as the ... Com. Dig.
... in statu quo: thus Courthat the Act 5 Vin. Ab.
must be debated ... Court & have their decision with a view to per- 2 Eq. Ca. Ab.
form the Agreement. It will not be Amb. 586
considered as part performance. So if one 3 Bro. C.C. 378
a Lease lays there is an Agreement 1 Ves. Jun. 19.
that the Lease shall be drawn, and the Tenant remains after the expiration of the first term: this is not considered ... as a part performance of the second. Thus ... 1 Ves. Jun. 526
upon the same principle if upon a ba- 6 Bro. P.C. 35
rol Agreement for the purchase of Lands, one of the parties goes into the Land, and lays out money upon it, this is not ... 3 Bro. C.C. 382 3 Ves. 379
sufficient ... such performance, as to take the Agreement out of the Statute of Frauds: it must be considered ... 1 ... 4.
part performance of the Contract relating to it, as to take the Contract out of the Statute. But it often happens that Mala- Prec. Ch. 561 Str. 937 1 Eq. Ca. Ab. 18 1 Bac. Ab. 74

1 Ves Sr 309 Contracts in consideration of marriage and
2 Ves 375 between parties against good use of the
2 Ves 381 Marriage itself: in such case a performa-
Hoff 104 nce of the Marriage is sufficient to
Vin Ab 330 subject the parties to it to bind the others for
him, because neither of those persons who
are to be benefited by the Contract after
they have performed their part would be
2 Eq Ca Abr 29 injured if the other should not perform
their obligation — The subject of transfer by the
parties to the Contract in order to its execution
has been considered — a sufficient performa-
nce — It is a general rule, that parol
3 Atk 884 Contracts may be proved when necessary
Feb 188 to prevent fraud and even to control it
P W 620 but cases at times on the ground when such
Cas Abr 63 proof necessarily involved their execution — &
Eq Ca Abr 29 signed Contract can always be proved
2 Vern 381 when it is only an inducement to com-
mission of fraud but also it may be proved
to have been mistaken in the execution of
written one because a Contract entered

Bonds

Imp. deed a mistake, it must be signed the	Fol. 89.
Covenant of the parties. Deed Transfer	" 93
Recognizing bond. Licence to appraise.	Fol. 134
Deed. Appointment in writing. Conveyance	Fol. 346
Original Bond. Letter to Secretary	Fol. 205
Deed. Letter. Covenant. Mortgage.	
Indenture of Covenant. Mortgage	Fol. 95
Mortgage to Equity. Deed. Power	Fol. 344
Case. Lease. Deed. Letter. Power	Fol. 346
Deed for the part. Bond. Letter. Power	Fol. 346
Deed. Bond. Letter. Mortgage.	
Old Deed. Bond. Contract. Letter.	Fol. 359
Deed. Bond. Letter. Mortgage.	Fol. 360
Deed. Bond. Letter. Mortgage.	
Deed. Bond. Letter. Mortgage.	
Deed. Bond. Letter. Mortgage.

Contents

[illegible]

[illegible] the [illegible] is now [illegible] [illegible] been established in Connecticut that [illegible] [illegible] and [illegible] [illegible] [illegible]

[illegible]

Of Estates

each party is entitled to give his opinion
of the Estate, divided by the Number
of Years purchase as contended
for by a Valuable one, such as
is founded on Landed Estate
effected between Man & Man: this is
confined to a short Term, every
one knows the Landed but not Personal
Estates, but as it often happens
that a Man must learn to
be honest before he is genuine."

In Estimating a Real Estate a Con-
sideration which is good though not a
Saleable, is frequently entered into and
Land though never in the Event of
Sale Of Valuable Consideration is
founded upon anything which has
Specific Value attached to it
Of Marriage is also a Valuable Consider
Relation of Land is directly to the Annual

Contracts

2 Kent 450

2 Johns. Cas. 51

1 Johns. Cas. 21

2 Johns. Rep. 465

1 Root 265

2 Johns. Cas. 51

1 Johns. Cas. 21

2 Johns. Rep. 465

1 Root 265

2 Kent 450

2 Johns. Cas. 51

1 Johns. Cas. 21

2 Johns. Rep. 465

1 Root 265

Contracts

to prove it by the party who would take Hard 309
the benefit of the Contract & Contract Ecclesiastical 320
without a Confirmation void if voidable 333
Fraudulent practices avoid it & a Creditor 3 Peere Wms 310
is Case that he must first apply either 3 Ch Rep 5
at Law - It has been argued by Counsel
that the Law respecting Infants 1 Salk 279
ought to Military Gentlemen who receive
Commissions - This proposition how Ld Raym 669 333
ever Ld Raym thinks not reasonable - Ld Raym 341
Cases & Precedents may be obtained the 1 Ld Raym 121
Courts perpetuate a Confirmation though 3 Atk 441
in equity Blackstone in his Commentaries 1 Vol
says & Postmen but it is held a mere
general rule to the contrary - And it is held 1 Show 240
that after a Negotiable note has been Salk 129
negotiated the payment cannot be 1 Ld Raym 574
set aside without a Confirmation 3 Ch Ca 71
& Attorneys and in Judgment of Law Hard 333
a Confirmation is as effectual to a void
Deed or Power as the original Deed 1 Vern 305
Simple Contract Debts for 6 years and

Contract

2 Kyd on Bills 65
2 Kyd on Awards 97
Ray Jag 1st Ed 377
2 Bac Abr 34
2 Wils 95
2 Atk 351
Cowp 284
1 Bac Abr 238
Doug 20
Str 1235
Esp N.P. 379

it is to be true that if either the Plaintiff or Defendant refuse to perform the award on his part the other may bring an action upon the bond or covenant, and therein assign the breach, and the Defendant is precluded to say it, he cannot contradict an assignment of the breach. The Court had a discretion in equity to stay proceedings in such action, but not at law. Frequently applications on the part of the Defendant that it was executed without a performance have been made, and have always been refused. But the Plaintiff was to declare: the breach of the Defendant is totally incompatible with the idea of a performance of the award. Lilly declared and who will think it unjust that a man shall be called upon to perform what he has actually undertaken to do,

Finally

For matter of Reasoning sufficient Cons. [illegible] Dig. 94
Circumstances on the Contrary Cr. El. 266
Confirmations at all: As if a Promise Bulw. 23
be made to Two by Words, part to the
one, & the other part at a time to be Cr. El. 67
done, & never done at all: In this case 56
Action is insufficient Confirmation Cr. El. 76
Likewise the mere relation of a Contract Dig. 94
and Covenant has been holden insufficient Com. 325
Confirmation to support a promise by the St. 1. 2. 3. 3
Law. The Consideration of Benefits, or Cro. El. 1. 5
Duty, from Something wherewithal Cr. Jac. 319
to the promised, though it may be found Cr. El. 79. 5
to the promisor: The consequence of this 8. 9. 88
ruling that Trust arises a Quasi and not Cro. Jac. 98
that a Confirmation [illegible] Cro. 3. 302
is not sufficient to support a Contract 2 Bulst. 73
But this, tho' it is not Universal. The Cr. El. 71
Confirmation will not support a Prom. 8. 9.
likewise in this case, because it was not Dig. 94.
made on account of this not executed 84
by the promise: For it may be defeated

to, or only to the promisee, is beneficial to the promisor when it will not [illegible] a promise made for a consideration though because the promisee may, no injury to the obligation, but the latter is usually called in such cases a voluntary consideration. As for example C. has a claim on B. & promises to forgive it. Certainly here the Consideration is past and executed. It is sufficient to support the promise, because there is no benefit accruing to the promisor though there is prima facie evidence of the detriments having been advantageous to him (the promisor) to substantiate the last clause of this proposition under which part of the consideration is executed, but the latter part is also executing for in the latter case the promisee is not bound to do any thing more, but he may do so, & the promise is void for want of consideration unless it be to be [illegible]

Contracts

1 Rolle R. 415
12 Co. 118
2 Wms 224
Cro. Eliz. 16

Lawful that the Consideration
does not appear any thing
collateral to the Contract or
void upon the whole
Thus a Bond to perform an award
is void if the Submission
be by Parol only for
that is but a void Agreement
& the Consideration cannot
be said to support the Bond
which is clearly an
Execution of both the Contracts
So where
a promise to pay a Debt upon
Consideration of forbearing
Indictments is void
for want of Consideration

6 Bac. Abr. 445
Comp. 210
The Case
1 Ld. Ray. 31
Carth. 407
Salk. 365

Where
there is a mutual
Obligation on the part of the Promisor
in the case of a Debt barred by the
Statute of Limitations a promise on
the Promisee is Sufficient for
the Consideration

Third

Contracts

to pay for his maintenance and all
Costs and to be liable to the same
Obligation above mentioned is void as
the Obligor may bound specifically to
perform and the promised indemnity
Bond of Hand. Yet is a good Consideration
tion to support a promise of indemn
nity. The first Consideration is void
2 Vent. 248 at the request of the promisor unless
3 Salk. 96 it support a subsequent promise. Thus
Bulst. 220 if A. request B. to bail his Servant &
Cro. Eliz. 88 B. doth bail him which is afterwards
5 Mod. 18 prosecuted to pay Costs for this he shall
Cro. Jac. 30 not be charged as sufficient Consideration to
support the promise. A promise to a
1 Vent. 1 Stranger for a valuable Consideration
3 Mod. 380 moves a Stranger against him. As if
1 Com. Dig. 343 A. promise B. that if he will release
353 him out of Prison he will pay Twenty
Pounds. Yet if he this cause B. have
Action. But related to B. might
have attached an action on his promise

Contract

A Forbearance of suing for a precedent
a good consideration on which to support
a promise. What is meant by Forbearance
of suing &c. Observations. Three
things ought to be proved 1.st That the 2d Digest 55
obligation forborne to sue might be either Ld. Raym. 396
total or partial recovered and likewise 2.d 1 Ves. 155
in the action on which the promise
would be chargeable or at least where
there may probable cause of doubt
Hence when a promise is to compen-
sation, in consideration that I would
forbear to sue, here this consideration
may hold void, because there was no ob-
ligation found, and may therefore neither
disadvantageous to the one or advanta-
geous to the other. Forbearance. Con-
sideration to forbear a reasonable time 1 Bul. 108
is good, because the determination of that 2d Digest 5
time is left to the Court. Uncertain
or part certain reasonable.
If the promise be express & nothing that

Contracts

The promise ought to be reasonable that
least that there ought to be some
consideration of benefit on the part
Com. Dig. pl. (Now a promise to pay another to pay a
Hard. 103 debt was given for the debt and void
Com. Dig. that the promise the debt was Paid
& have been no consideration for
which both of the parties ought to be
Com. Dig. pl. 3 restored in this case a bond & promise
Hard. 103 to pay for the affection, this would not
Sid. 420 bind him: But it seems to be a rule
Com. 278 that where the promise is in Consider-
Cro. 18 ation of forbearance of suit the original
Com. 357 cause of action is not to be considered in-
asmuch as [illegible] consideration
to the [illegible] and
[illegible] Where the promise is altho
Watts 174 later and there was, is in consideration of
Yelv. 10 performance of that which is stipulated in
Vent. 38 the other, as if A agrees to pay B a sum of
3 Keb. 93 money in consideration of his building him
a house & B does perform the part of

Contracts

On a bonâ fide agreement to do a possible thing, 16 Vin. Abr. 438
a precedent thing is not the consideration 7 " 125
of a mutual promise. And it is plain, that Str. 454
if the promise be waived and relied for the " 1264
breach of a subsequent performance on Dr. Bon. 156
the part or what is equivalent thereto, then Bac. 625
he may have a tender of performance which 1 Vin. 320
is equivalent thereto. If he may have that 2 Ch. 18
he was about to perform and the per- Bac
mission prevented him: If he may plead
that he was at the place ready to perform
what the promisor was next to do, if the
performance of the promise was necessa-
ry: All of which pleas are equivalent to
a performance. And when the performance 2 Vin. 4
of both sides is concurrent, neither party 1 Ch. 123.
can recover the debt or damages unless 1 Lev. 302.
he has tendered performance of all 2 Vin. 30.
things, or done that which is equivalent Lev. 69
to a satisfaction, for the condition is Bac
created and annexed to both parties
in fact alike, it cannot be said of either that

Obligations

And if the day appointed for the day Dav. 358
payment of the money is to be before the Cro. Eliz.
Covenant broken, after the performance 3 Leon.
of the Condition is to be void: If a Cro. Eliz.
Condition precedent, or performance
thereof should be pleaded, it would
be doubtful who would have the action
on the Contract: But Secondly, Where the
promise or undertaking on both sides
are mutual, that is, where the promise
or one side is the Consideration of the pro-
mise on the other, there is no Condition
precedent and either side may recover for C. B. 1665
the mony mentioned in the action on the Hob. 88
Case, without averring a performance 1 Leon. 303
on his own part: As for example, if 3 Mod. 85
a man by Parol for a Consideration Carth. 94
of 40s promising to build a House
thereupon in a convenient time, & he
promises to pay him 10 or 20 in Consi-
deration thereof: In this case either of the parties
may maintain an action on the Contract

Contract

But this last rule does not hold in a Court of Equity. For though the promises are mutual, yet he cannot have a remedy in Equity against the Defendant for performance of the Contract. This difference between Law and Equity arises from the Nature of the Courts. For the Chancellor in Equity considers the Contract as a conveyance of the Land, and the Vendee as the Owner of the Land, and will not decree a performance of the one, but will decree the performance of the other, but will leave the party to his remedy at Law against the Vendor in damages as to what concerns the Land. In Equity the Vendee is considered as the Owner of the Land, and the Vendor as the Owner of the Money, and will decree a performance of the one

Contracts

The first part of this section is concerned with the construction of contracts and the principles which govern the interpretation of their terms. It is to be observed that the intention of the parties must be collected from the whole instrument, and not from any single part of it. The meaning of words is to be ascertained by reference to the nature and subject-matter of the contract, and the object of the parties may be collected not only from the words of the instrument, but also from the surrounding circumstances. Where the language is clear and unambiguous, it must be taken to express the real intention of the parties, and the only question is what is the meaning of the words used. Where, however, the terms of the contract are doubtful or ambiguous, evidence may be admitted of the circumstances with reference to which the words were used, in order to ascertain the real intention of the parties. Where the terms of a contract are such as to admit of two constructions, that construction is to be adopted which is most favourable to the party who has no control in framing the contract, and who has merely to accept or reject it as it stands. Where the terms of a contract are such as to admit of two constructions, that construction is to be adopted which is most favourable to the party who has no control in framing the contract, and who has merely to accept or reject it as it stands.

Contracts

Contract between Queen Anne and the
Company trading to Hudson's Bay and
Straits. That Declarations may be given
instead of Oaths in certain Cases.

[illegible] The Queen's Most Excellent Majesty, by and
[illegible] with the Advice and Consent of the Lords Spiritual
[illegible] and Temporal and Commons in this present Parliament
[illegible] assembled, and by the Authority of the same, for the
[illegible] more speedy and effectual Recovery of Debts, Sums of
[illegible] Money, Goods, Wares and Merchandizes, Chattels and
[illegible] Effects, within this Kingdom of England, and Dominion
[illegible] of Wales, and Town of Berwick upon Tweed, and
[illegible] Kingdom of Scotland, and Ireland, and Islands of Jersey
[illegible] and Guernsey, and Islands of Orkney, and Isle of Man,
[illegible] and Plantations, and Territories thereunto belonging,
[illegible] and for the more effectual Prevention of Frauds and
[illegible] Perjuries, in Cases where Oaths are required by Law,
[illegible] and for the more Ease and Indemnity of such as are
[illegible] obliged to take Oaths, be it enacted by the Authority
[illegible] aforesaid, That from and after the Twenty-fifth Day of
[illegible] March, One thousand seven hundred and four, in all
[illegible] Cases where Oaths are required by Law, Declarations
[illegible] and Affirmations may be made and given instead of
[illegible] Oaths, by the People called Quakers, in the Words
[illegible] following, viz. I A. B. do solemnly, sincerely and truly
[illegible] declare and affirm, and if the Matter to which such
[illegible] Declaration or Affirmation relates, be in order to the
[illegible] Receiving any Office, Place or Employment, or to the
[illegible] Giving Evidence in any Court of Record, or before
[illegible] any Person or Persons whatsoever, shall add these
[illegible] Words, viz. And I do declare in the Presence of
[illegible] Almighty God, the Witness of the Truth of what I say.

of the Confiscation, from the terms of
the Instrument = But where an act of
Confiscation does not extend upon the face
of the Instrument it is presumed no other
can be pleaded and there, because no
parol Agreement can control a Written
one and therefore and facit estare tacitum
et Communis Error facit Jus in the Confir-
mation of a Contract does not vitiate it
but in the execution of it in a Court
of Chancery Courts will set aside a Con-
tract obtained by fraud in the Confirma-
tion: Nor as aforesaid before the sealing of
the parchment, in the two Courts, does not a
variance from a re-pursuance of the Conditions, place
to stand on the Contract but from their
different modes of proceeding - Where a
Court of Law a Contract must be enforced
in toto or not at all, but in a Court of
Equity it may be used in one part and
good as to another - Courts of Law Con-
tract in Consequence have decreed that

7 Bo 40
Par. L. 318
2 Bl. H. 234
2 Bac. Ab.
365
1 Ch. Ca. 24
2 Ch. L. 34
2 Ch. Ms. 303
3 . 361

a total fraud in the Conveyance, will defeat even a Specialty: but it is otherwise of a partial fraud in the Consideration however great it may be; which must be relieved against in a Court of Equity as well as in Chancery. Ld. Foulkestone thought that the execution of the Power reserved in a Deed was like Words of the Statute

Of the Interpretation or Construction of

Contracts

The object of Construing Contracts is to ascertain the intention of the Parties, and the Courts Power in explaining can not be carried beyond that. Though a Covenant executes an Assignment to A in the Life of a great Lease, that entitles A. to Grass & Corn only, he may distrain upon the Lessee's Cattle. Rent only distrain'd for the use of grain excepted and but 10s. A Covenant to repair does not

1 Ves. 164
1 Ves. 339
Willm. 105

Contract

Tho' as on their own head a Contract can
not be carried, beyond the intention of the
parties, do' either it is to be carried to
its full extent intended, if the words can
be so construed as to effect it. The words
used in a Contract are to be understood, in
their ordinary and most known significa-
tion unless there are specific pleas to the
contrary. As the rule is in Municipal Law
so Continuance of time, it is a rule
that is least favourable against, means so
long, Fortnight Month, but two Calendar
months is for the whole year. There is
no fixed quantity can be ascertained
as they are understood at the place where
the Contract is made. The money is con
tracted to be paid according to its value or denomination at the
time when it is delivered and
not when the Contract was made
by which it is to be paid. Cap.

Contract

that money should be paid in specie
currency or in Sterling: And in
case both parties concurring the sale could
not be got to be delivered at a con-
venient place: as if a sale at York could
be got in Alexandria a load of Wheat for
Instance Quere that the Wheat should be
received by the Virginia, case not be
the York Quere (Above) the Inspector
of a Contract ought to see the face
of the reference should be made to different
the intention of the parties & their Assigns at
the effect of a different Conjuncture and to
all the circumstances of the case = Like the
same principle if a grants to B a right
of Common the old Mill Land & the same
not yet this grant, but his Heirs & Assigns
Quere Richard Baker & others: Deed
to that a Contract may put right to that
effect, it is a rule of Construction that in
Agreement in writing or in writing can
not be varied or contradicted by Parol

Contract

such a Contract as this gave Liberty to
the Masters to set ground Rents for
the Covenants and Conditions of the
Lease to be made to the Tenant for
ever, this is construed to be a Lease
for a Term of Years determinable
on a Life or Lives at the Election of
the Lessee at a Rent reserved, and this
is construed to be a Lease for ever
as a Purchase: and likewise if a Grantor
covenants, means to give his Grantee this
is construed to be a Discharge &c.

Where the Construction of a Contract ac-
cording to the ordinary meaning of the
words will produce inconsistence and
absurdity a different Construction must
be put upon them & the words Lands to
and their Heirs Grants and Conditions that
the party should punctually and
well observe & do during the Term the Lands to go
and to be upon the rent; that if the money is
not paid at stipulated times, the Lands
shall be confined as mere Security and

B.P. Reg. 150
L. Raym. 150
2 Saund. 74
Cr. Eliz. 350
Rich. 874
T. R. 446

2 Bl. R. 1155
1 Burr. 2420
Cr. Eliz. 420
2 Lev. 234

Contracts

the grass which are rented held and en- Lt. Raym.
tenanted of him for any title now but the 909
common right notwithstanding the grant 1366 534
is pleaded. Also if in the Construction
of Pleadings there is a doubt of a fact 1 Sid. 67
not alleged, pleaded by general words of
pleading the Statute 32 H. 8 is pleaded by the 3 Mod. 92
General Issue. This is a branch of all de- 6 Co. 76
murrers, viz the receipt of a particular sum Barnardist.
not only the whole principal sum but 2nd Cay.
part demanded is discharge, and a Cafe 2 Mod. 330
which was decided to the contrary in Keb. 785
Chapter was denied by Lord Holt. 3 Mod. 277
But if after the publication of the rules of
Construction, the intention of the parties
still remains doubtful, the Construction
must be confined and strictly Plowd. 10
against him who is bound by it. The rea- 156. b.
son of which is that the Drawer of the Plowd. 89
Contract are in judgment of law the 161. b.
and he should have explained himself 161. a.
any doubts fully. That is Lawyers Law 36. b.

agreeable to the Statute where there is any
Statute in the Constitution of a penal
Statute - the Words in the Statute of Ja. 1.
Chap. 15. and the Statute 21 Jac. 1. cap. 8.
Stat. 23 Eliz. 1. c. 3. are to be understood in the
Eliz. 1. c. 3. Common Acceptation of the Words
Stat. 14. and not because it is in the nature of a
penal Statute that the Construction
of one is bound in a penal bond with Words
to perform Covenants in certain Deeds and
Penal Sum Writings of the same nature the
Penalty is to be understood at the
Deed and not the Performance is
bound in a penal Sum to make a Deed
Stat. 23 Eliz. according to the Nature of the Deed
Penal Sum and so accordingly the Bond is void
Stat. 35 Eliz. when it was lawful and the Penalty is
due - Subject to the above Rule, there is
another One - There is a Second Exception
Stat. 21 Jac. 1. c. 8. that where the Application of the rule will
defeat the Intent of a Third person it shall
not be construed accordingly as in the case

Contracts

Grantor: When it is found inconvenient
to keep for life, it is customary to be a lack
for the life of a person, or right of others, to
be paid the title of the Glen in trust
to a lack person during the continuance, by
a trustee in fee simple, it would be con-
strued a lack for the life of the lack-

Grantee: Is not a Tenancy made but subject to the
former, that the words of a Contract are
to be construed in the most favourable
view for which they are generally used
strongest: As for example: a Covenant with
Warranty against all adverse claims
against the person, not only during
the continuance of the Contract or Lease
thereof, but to the Subject
to which it extends under the Grantor
covenant or Contract: As
for example, where two joint tenants enter
a Contract of sale, Warranty, if one dies
first, the whole shall go to the survivor
as to the two joint tenants, and not

Cont. from
4.

Contracts

was to be seen that there was proof of sufficient but that was not there - It is a rule in the construction of Contracts, that if the thing stipulated for is not performed as the terms of the Contract require, the value of the thing stipulated for at the time when it should have been performed is the rule of Compensation for the party claiming under the Contract. There is however an exception to this rule when the Articles might in value after the Contract should have been performed: in this case the party will be entitled to the value at the time when if the price should fall in place of rising the rule of damages will be the value of the Articles at the time when it ought to have been delivered = In the construction of written Contracts it is a settled rule of law that all writings are made at the same time, between the same parties and on the same subject, they are to be considered as but one Contract

Contracts

Offer and acceptance of a unilateral contract

Until the terms of a contract are accepted on both sides, there can be no contract. A contract, therefore, before it is executed on both sides, either party may withdraw his offer and refuse to be bound by the other's acceptance. Such a contract is called executory. When both parties have performed their promises, the contract is executed. A contract executed on one side only is sometimes called executory, sometimes executed, depending upon the point of view. Thus, a contract to sell a horse for $100 is executory when the promises are given, but executed when the horse and money have been delivered. An offer may be withdrawn at any time before acceptance, unless the offeror has received a consideration for keeping the offer open. But if an offer is irrevocable and accepted, a cause of action arises at once, and the fact that performance is not due until a future time does not affect the matter.

Contracts

there is no Contract between them: As for instance if a man lends money to him, Dig. 50. 16.
& will expressly declare that he does it 3. 6.
only to give it to him again if they please
then no further Contract is made between
them, but as soon as the money
is paid it is gone: Therefore
for the benefit of obliging the Contract either Mornac. ad
the money must be paid the goods delivered l. Cond. sine
or some other obligatory Agreement 309
be entered into, which gives the Contract
to the name and right of the property
as to be sued by: but if any part of the money Godefroy.
be paid down though only a penny or Inst. lib. 3. tit. 24.
any portion of the goods delivered by way of
earnest which the Civil Law calls Ar-
rha (and is called to be Jus Etimig Gra-
tianig Contractae Augustinianae) the
property of the goods is absolutely known
by it: and the Contract is perfected
by action as well as that compleated
even the price of them: (But agrees to
sell

Contracts

Mort. 1. goods to be once given in certain time to
Bl. 1 deliver the substance to suit better than or
Dacres case 1 day within that time
pract to take them of which he gives
notice else is not bound by the bar
bred, because it was not binding when
made. Therefore such Contracts as
among Merchants, where the usage of
action or barg are not known.

Of Mutuall assent and
Mutuall Contracts

Com. Dig. Before right of action can accrue
Title Action on a simple Contract the parties must
B. 1. 3 discharge it notice it must be mutu-
Com. Dig. al Consent: for until a right of action
Ca. Ab. 383 in accrues the Contract is liable by the
Sect. 14 assent of the parties but if they mutually
Bro. Abr. debate the Contract is cancelled in
Pl. 1. 388 nullo. But after a Contract has been
Plowd. Rep. broken on either side a right of
Dyer 146 action accrues it can not be discharged
Com. Dig. by any Agreement between the par-

Contracts

1

rule by Lord Coke. 3 Mod. 144

Watson v. Burton. 1734. The reason of this distinction, is that after the Contract is broken, the rights, and demands which can not be discharged by parol, but must be by deed. Ch. Prec. 1. Thus is one exception to this rule in 2 Salk. 394
the case of Bill of Exchange, which has 2 Ld. Raym. 1542
been accepted. & for in that case the 2 Vern. 235
Acceptor may be discharged by parol. 247
of Contract may be varied by a long 2 Ch. Ca. 116
recital on both sides to execute a claim 2 Eq. Ab. 207
under it. As where there was an Agree- 9 Mod. 3
ment between Husband and wife before 1 Vern. 465
marriage that she should have 400 pr 2 Eq. Ab. 90
annum, & her own disposal. And the 2 Vern. 82
Court permitted the Husband to receive 1 Chan. 209
profits during the whole Coverture as his 1 Eq. Ca. Ab.
own property: but upon action brought 2
since Marriage by the wife, was over-
ruled as a Debt. But a presumption of
this kind may be rebutted as may the
case.

Contracts

Lett. 282 exercise and examples provided to the Law
Lett. 1st Con. cases, where the words have their plain
Con. 420 grammatical, and ordinary signification,
unless such construction would involve
some absurdity, or inconsistency with the plain
and obvious intention of the parties, as
gathered from the whole instrument.

Lett. 285 Where a Contract contemplates two
Cont. 8. 8 documents, such documents are to be
Prop. 23 construed together, even though no reference
1 Ves. 20 from one to the other be found.
Doug. 245 Parol evidence of the Original Contract may be
3 Esp. N.P. 89 given to explain a Memorandum, which
Mod. Rep. purports to be a Memorandum of the
4 Term. whole Contract, but is proved from its
Peak. 301 nature to be only part of it.

Parol evidence cannot be given to explain
what is the proper construction of a written
Con. 1. 1. 13 Instrument, but such evidence is admissible
to shew what was the subject matter to which
the Instrument relates, and the circumstances
under which it was executed, in order that the
Court

Contracts

Contract

that I
personally
Contract
to build
or
49

Contracts

Actions on Contracts

Debt

Assumpsit for property delivered — 3 Bac. 886
to an agent on his own account — 2 Esp. 573
against him who is indebted on his own account — Esp. N.P.
for value received — Chambers
on Contracts p. 193.

If a person promise to pay for property delivered & services performed to another, he is personally liable on the account & may for his promise though verbal — 2 Ray. 838
be sued without mentioning the debt because the promise was in this case the original debtor — But if the person who received the property was himself indebted & promised — Lutw. 93
merely to pay the money when received from — Bing on
another, the promise is only in the nature of a — Bily 222
security & will not subject — Selw. 59
the promisor, except before debt paid — Esp. N.P.
& the agreement be accepted in writing — Stat. 29
Except, because the Statute only says — 29 Car. 3 c.
that no person shall be charged — 3 Wils. 129
by virtue of a promise, unless &c. — Bac. Ab.
the words are implied promise, otherwise there — 3 Bac. 88
is nothing to be a bargain & contract of — Campbell 2nd
sale between the parties as against the — Chitty on
Statute — Contracts

Actions on Contract

Debt

Petition on Bankruptcy

Single Magistrate; or Petty Courts for recovering small Debts in Scotland, examined and compared with the Bankruptcy Act.

On the Constitution of the Courts, they are principally Established for the South and East Divisions of the County of Lanerk. Hamilton is nearest the former, Lanerk the latter. Most Persons under the Jurisdiction of the Sheriff live within 8 or 10 Miles of the Town. The Commissioners and Assessors of the Poor Land Tax to the Sheriff, and Quorum it may proceed in the Country. Mr Lauderdale accounts to this Qualification the Exclusion which the Law Declaration of the Commissioners. He declares upon Examination, that it is unnecessary to have the Original Court of Session, the Court of Exchequer, and Justiciary, the Court of Admiralty, and Commissioners of Teinds.

Dec 8th
2 mins
in Jan 84

Dumfries.
2 / 9 / 18 24
1 mins 3 s
1 mins 46
2 mins 12

Dumfries
Feb. 46

Dec 9th
Sept 1810
3 & 4 Will. 4. c.

Actions on Contracts

Debt.

Debt for Rent reserved upon Lease for years

Assumpsit

Assumpsit for Money had and received

Assumpsit for Money laid out and expended

Assumpsit for Money lent

Assumpsit for Money paid by Plaintiff for Defendant

Assumpsit for Money due on Account

Assumpsit for Goods sold and delivered

Assumpsit for Work and Labour done

Assumpsit for Money due on Bill of Exchange

Assumpsit for Money due on Promissory Note

Assumpsit for Money due on Award

Assumpsit for Money due on Policy of Insurance

Assumpsit for Money due on Agreement

Assumpsit for Money due on Bond

Assumpsit for Money due on Judgment

Assumpsit for Money due on Recognizance

Assumpsit for Money due on Mortgage

Assumpsit for Money due on Annuity

Assumpsit for Money due on Contract

Assumpsit for Money due on Quantum Meruit

Assumpsit for Money due on Quantum Valebant

Assumpsit for Money due on Quantum Valebat

Returns and Contracts

Deeds Where any time of payment is fixed in a deed the day is to be reckoned exclusive and not inclusive as the first day is excluded. An Act to amend the law relating to the proof of deeds executed in pursuance of powers of attorney. Where a deed is executed in pursuance of a power of attorney it is generally necessary to prove the execution of the power as well as the execution of the deed. But this may be dispensed with by the 3 & 4 Will. 4. c. 42. s. 8. which enacts that every deed executed by any person under or in pursuance of any power of attorney shall be valid and effectual to all intents and purposes as if the person executing the same were of full age, sane mind and memory, and free from duress at the time of the execution thereof, unless the contrary shall be expressly declared in the deed. Where a deed is executed by a corporation aggregate it must be executed under the common seal of the corporation. Where a deed is executed by a corporation sole it must be executed under the seal of office of the corporation sole. Where a deed is executed by a person who is blind or illiterate it must be read over to him in the presence of a witness who must subscribe his name as a witness. Where a deed is executed by a person who is deaf and dumb it must be executed in the presence of a witness who must subscribe his name as a witness.

Actions on Contracts

Debt

An action of Debt will lie upon a
Covenant whereby it is given for a
certain sum. Strange 1189

1 Ear 451
5 " 694
2 Lev 37

It has been decided that a Condition that
the obligor shall account & pay over
from time to time any sum or sums
of money received for the use
of the obligee & pay it over for
neglect of the penalty and he is employed
a little like an action of Debt

The proper action on which is usually
called a "Due bill" (W. Jones considers
it Debt. because it is in the nature of an
Indebitatus Assumpsit but Comyns says
very fully differs. A Due bill is an acknow-
ledgment for debt and a promise to
pay certain sum. By these are bonds
with penalties & there are Covenants with
Condition: and whenever a penalty is at-
tached or contained in a Covenant
there lies an action of Debt for the penalty
as in Bonds, for the Covenant [illegible]
ken.

3 Editions of
Comyn 382 to 384
1 Term 388

3 Bac Abr 745
Com Dig 36
Debt B
Stra 533
Dig Pl 25
Bac Abr

Debt. Actions on Contracts

1 Bl. Ch. 418 The Covenantee may sue in action of covenant
2 Bac. Ab. 4 if it appear that the Covenantor has
Ch. on Pl. 220 have the election, in which case Debt
Wood 881 will not lie, but he must sue in covenant, because
Bac. Ab. 206 it is presumed he has elected to pay the pe-
2 Bl. Com. 305 nalty. The action of Debt lies for what
Co. Litt. 292. a. is reserved in a lease, and is moved against the
2 Dyer. 188 party sealing. However Covenant will
plainly lie wherever there is a Covenant
to pay the rent though Debt will likewise
will not. The action of Debt for bare
rent will lie against the assignee of the
lessee for the sole remedy appointed
5 Dyer. 188 by Statute and afterwards a judge
Com. Dig. 214 to regain possession. Now will Debt lie
Bac. Ab. 206 upon specific Articles. Thus if a Surety
2 Bac. Ab. 4 pay, and an Execution on specific Ar-
ticles, or bonds of 2. but pay part of
the sum. The plaintiff can not maintain
an action of Debt for the rest
Salk. 74 but can against the Surety. Payment
2 Bac. Ab. 8 of Debt on a prior Contract and the

may be given in evidence under the general issue which does not contradict the issue itself: as thus in a plea of the Debt the defendant may plead the Statute of limitations: a plea of payment or the like: but in an action of Debt, where nil debet is pleaded after the Statute of limitations: no plea of Payment can be given in evidence

2 Roy 566
2 Dig 366

Secondly: Detinue

Detinue

Detinue is a personal Action which lies for the recovery of a specific Chattel and in this respect is similar to the method of a title in Ejectment: it differs from an action of Trover in this, that the latter is only brought for the recovery of Damages: & the Plaintiff in this can only recover he has judgment to recover the specific restitution of the Chattel detained: which judgment however is usually followed by a writ of Execution, viz that if he do not obtain the

Finch 286
3 Wils 309
Ej. fac. 34
2 Bac Ab

Detinue

specific chattel an equivalent is to be had in damages which are assessed in the judgment. But the action will not lie for any chattel that can not in the language of the Law be identified i.e. that cannot be distinguished from every other chattel of the same nature: thus Detinue will not lie for 9 Barrels of Beer, for money if not further defined, but if it be for 10 Bars of silver it will, or for the like number of pieces of gold of such a value. This action only lies in those cases where the defendant obtaining the possession lawfully as by the delivery of the same since detained unjustly contrary to the right of the plaintiff. Detinue is always founded upon a bailment express or implied; and where the bailment is tortious there can be no bailment upon which detinue lies. It is found concerning that it was necessary to aver in the writ that Detinue lies for a tort. It is said that Debt and Detinue may be joined

Actions in Contracts

Detinue

in the declaration: as first the general nature of the two actions is the same: the only difference is that one lies for the recovery of a specific chattel: when Debt that it is called Detinue and when for money it is called Debt: Consequently Detinue will not lie for a standing money but because the intention of the parties clearly is that only the value in pay- ment the same amount should be return- ed and not the same pieces of Brass Elizabeth of twenty lies in all cases in which Detinue will, but not e converse This action was given by Statute as more remedial than the action of Detinue: because the action of Detinue only lies where there is one wrongful detainer but Trover will lie- both for an unjust detainer and wrong- ful taking The action of Trover is as to Detinue what the action of Trespass upon the

1 Bac
2 Bac 28
3 Bl Comm 153
2 Lewis
W Jones

Roll 6 5 6
2 Wood 44

Detinue

Detinue

is a Debt in Simple Contract: Detinue was introduced to remedy the defects in the action of Debt, and the other the defects in the action of Trover. Detinue lay
1 Roke 34. 1 Mod 48. 6 Mod 248. 2 Ld Ray 748. 2 Brownl 97
where Goods delivered in England by one of the Defendants having Privilege of Parliament &c. and not because the Plaintiff must recover the thing demanded or nothing: i.e. it must when recovered answer precisely to the description given of it in the Declaration.

Trover has taken the place of Detinue in almost all Cases: and indeed the Practice does that the very nature of the action of Detinue's being brought in England or at least a Century ago

Actions on Contracts

Recap.

favour of an Executor or the administrator under Stat. 23 Geo. 3. c. 2. and 31. Edward 3. c. the action is confined both in favour of and against the Executors generally in Cases of Accounts, Receipts, Payments, and Maintenance as to respects damage Merchants-

By a Bailiff is meant a person who has received property of another to manage for him and account for it: and who is entitled to an allowance or wages, for his services as bailiff. A Bailiff, accountable for those profits which he has made and likewise liable for such as he has not made any Merchant may sue for which he should have received.

Ld. Raymond. If one who has received money for a person to account for to the Plaintiff is not entitled to have an action for it: unless he has received the money to the Plaintiff's use. Thus if a Magistrate or Judge is not to be sued as he received no fees, because he is not entitled to them.

Actions on Contracts (Accot.)

of a Executor and an action will lie 2 Lev. 4
against him as such: But to this rule 1 Sid. 170
there is an exception as between Saint 1 Roll. Ab. 924
Merchants. For the Merchant that is 1 Bl.
dead in confidence of his personal
Attorney shall have a reasonable al-
lowance for his trouble. Upon which ground
this distinction that an action of Debt Debt
cannot be maintained against a Exr. Sid. 170.
(of changing) him as a Executor 1 Sand. 99
Statute of Bankrupt give the action
of Account against joint Tenants, Co-
tenants in Common and Coparceners. Stat. 13 Eliz.
it is also extended in favour of and against 31. Eliz.
their Executors: Such Executors as are
obliged to pay Legacies against their Exe-
cutors and to Residuary Legatees and
suits against Executors: However this
Statute does not extend to Guardians
(Executors of Executors) Administrators
Executors cannot be in one capacity
The action of Debt lies against one

Decl.

Objections on Demurrer

Ibid. 89 Demurrer cannot be grounded upon matter
Ver. 486 contained in the Bill for the Defendant
Sid. 305 has a remedy at Law: and a Demurrer for
1 Ch. Ca. 249 the other Side of England in Respect of the Plaintiff
2 Vern. 58 for the Defendant may live and reside
2 Ch. Ca. 58 & the Plaintiff may live and reside in the
1 Mod. 99 Country at a great Distance from the Defendant
(20) which Circumstance is to be material.

In Declaring upon a Demurrer the Plaintiff
should shew some Cause why
and in what the Case of a Demurrer
Plea or Answer is brought before
Barons after Issue joined
Demurrer in Law the Plaintiff should
state in the Declaration on what account
they are relied, and that the Defendant
for such and such Reasons ought
that he rejoin &c

Com. Dig. Pleader (E 3) If Plaintiff account for no Cause of
Demurrer Action but such as is
Barnes 215 founded upon the Defendant's Deed it is
sufficient to declare generally upon the
Deed without setting it out

Declaration in Ejectment

made on certain Contract to be made
to Frederick Bennett on behind and the
Premises in Question: Whereupon that Jurisdiction
Likely to Arise was not Objected to the Action of Ejectment
but that they Could not be Elected: But further
Objected that Issue should Issue Directly to Herald
as Land Agent by Virtue of that Act that the
Plaintiff should not be Compelled to Join
in the Particular Terms of the Agreement
Contained in the Declaration Inasmuch as the Agreement
of the Parties Could not be Ascertained
Without Reference to Proceedings of another Court
Contained in Several Deeds and Papers and
Could not be Read in Evidence Without
Such Reference Which Could Not Be Had
Should Be Compelled to Produce the Deeds
& the Action of Ejectment Could Not Be Maintained
& Authorized to Elect Their Own Issues
Had Been Made Out Which Could Not
Be Done Until the Defendant Account for
Several Years Rent Which Had Been Received
by Him Which Exception I Conceive to

Action on Bond
(Recd)

Parties the Court appointed Auditors
and after they were sworn their Oaths
as pursued the Court ordered a Writ to
issue to the Defendant to shew their Reasons
why Execution should not issue upon the
Judgment and Bond which the Court
has received against the Defendant
to be heard at this Court
The Defendant appeared by his Attorney
and the Plaintiff by his Attorney
Whereupon the Defendant
pleaded that the Plaintiff
ought not to have Execution
because he says that the Plaintiff
hath not performed the Award
in the Bond mentioned
but the Plaintiff
hath refused to perform
the same on his part
and the Plaintiff
hereupon demurred
in Law

Actions on Statutes

Statement = Satisfaction is not a bar 1 Roll. 23
to the action, and therefore it is that they 6 Coke 4
themselves and particularly recounting
that matter given in evidence
by the statute in Defendant may
declare of it at large. But that the
Defendant has fully accounted" is a new 3 Mod. 113
plea because if he has fully accounted 1 Roll. 425
the Plaintiff has no right to recover and
if he has no right to account he has no
right to any action: in such case how
ever the Jury cannot go into the ex-
amen of the account itself but the action
is not maintainable that the Account
has been settled. Where the Defendant 3 Mod. 73
admits that he was indebted to the 113
account no plea will be good but that
he has fully accounted or that he has
a release in what is a reasonable time 1 Roll.
the parties may plead and join issue 3 Mod. 89
upon the matter either in fact or in
fact: the same may plead in either 2 Lev. 86. 206
arrear"

Pleadings on Contracts

Actions and Evidence

(Record
3 Edw 6 2 87 Difficulties which arose in Conducting an
24 29 381 Appeal before the Justices of the
Courts in Equity under the Statute
of 5 Eliz. c. 9 and Observations thereon
5 Eliz 8 Extracted from Lord Bacon's Letters
and Speeches Vol. 1 p. 16 &c.

Upon Complaint of either party in Chancery
with the answer he may apply to the Court
for Subpœna. Upon the Return of which the
Defendant giveth Bail, or else is
kept in Custody. The Defendant
is to answer upon Oath, and
Interrogatories may be put by
the Plaintiff, and
Witnesses examined: And
Publication is then granted, and
Copies of the Depositions taken
Publickly, and
Counsel heard on both sides. The
Decree is then made, and
Process for Execution. The
Defendant thereupon, or at any
time after, may
to show Cause why
Execution should not
Upon which
is heard

Notices to Contracts

Notice
Required

Where a promise to pay a sum on the performance of a particular act or the happening of a particular event is made no notice of giving notice to either party may be necessary to be performed

Where it is necessary to give notice it must be given within the time required by the Contract otherwise it will be void and no valid

Where Contracts to do an act on the performance of another act by a stranger it is not necessary to give notice to the first promisor to be ready within the known hours of both and the promisor is bound at his peril to take notice of it.

If a promise to pay £ 5 on Christmas day and the day arrives it is not necessary that the Creditor should give notice to the Debtor within a certain time a demand of money of £ does not pay it.

Even if the contract is to pay such a sum as shall be directed by

Notice Required

Contingent

Performed

Reasonable time

Condition precedent

Digest

Read 74

Ante 402

Ch 43

Contingency

Reasonable

Digest

Title Cond.

2 Q. and B.

Read. 75

Reasonable

Ld. Jac. 402

484

4 Mod. 230

Notice & Request } Sale of Soft wheat to be specified

Notice
Request

Pleading on Contract

)
)
)

Declaration

The plaintiff by his attorney complains of the defendant in an action of trespass on the case for that whereas on the day of in the year of our Lord at aforesaid the plaintiff and the defendant made a certain contract by which the plaintiff agreed to sell and the defendant agreed to buy a certain quantity of goods to wit [illegible] at a certain price to wit [illegible] per [illegible] and the plaintiff in consideration thereof promised the defendant to deliver the said goods to the defendant on the day and year aforesaid and the defendant in consideration thereof promised the plaintiff to pay him the said price for the said goods on delivery thereof and the plaintiff avers that he delivered the said goods to the defendant on the said day and year aforesaid but the defendant has not paid the said price or any part thereof to the plaintiff although often requested so to do to his damage of [illegible] and therefore he brings his suit.

Declaration
Trespass on the case
Contract
Sale of goods
Delivery
Payment
Breach
Damages

Action on Bonds

Request

in the first place please to send for this
and then proceed to choose proper
time & no doubt will be the best way
the Budget but I can see altogether
necessary to this difficulty & I find
conceive the general point is to be agreed
Where the Debt or Duty is incontestable
independent of the Contract or proceedings
which the first is usually an action
required is not necessary: Thus if a per-
mission to plant B on removable premises
hereby bound to remove) an action on
grant is necessary but before there
Can pass from the confirmation of the
Contract to promise, and is thus a part
of the cause of the action. It is necessary
then should be a formal request
In this case I should not it is pre-
supposed for then is no breach & and
no action is necessary. In declaring
the distress is supposed after and
before sunset & in such case I have

Salmon vs Bamford

Where words are omitted are sufficient
as to the point of request: But as the other
words are added as second request is necessary
to support a Count: there can be
no second request except to accord with the
first request: this rule however to the
Court although it has required accordingly
in fact Rule in any case, where no
second request is necessary: if the case
warrants that he write, reform: and the
Court that he will give Counsel men
notwithstanding the word (as requested)
inserted after the first request. Counsel
see and that one where request is
unnecessary the Court is not governed
by that where special notice of a fact
is requested is necessary time and place
must be named: because the request be
long enough, is stated: this rule is
said accord as ungrounded and unin-
useful but that Court concurs it as
being unnecessary where the ground

Where
request
unnecessary

Counsel
Cases

Ld Ken: in
Ex. Co. 183
Sutton
Counsel
Sum Ken:
Ex. Co.

Ground

Pleading

Notice

Request includes a denial of notice and re-
ceipt given. The want of an answer is
Stark 69 special request or notice cannot be given
1 Sel. pl. 85 But it was unnecessary and irregular
1 Sel. pl. 83 but can now not be remedied by Ver.
3 Bl. Rep. 1 dict in fact that the party gave the
Rep. 85 notice: for 1 Day to the Country but leave
is granted. When a special request
Stark 389 accompanies the Averment of having made
1 Sel. pl. the Demand it must specify the time
3 Stark 308 when and the Defendant's place
where at the time. It is a
general rule that when the Contract
is to perform any thing on request
the Defendant can not before Action
brought be liable without request & Special
1 Chitty Request is averred. The averment is
Rep. 325 Not to be proved by direct evidence of a
Stark 311 Presumption that the Plaintiff never
was prepared to pay a certain sum
Stark 85 did pay
3 Stark 108 it to be made by a Plea puis darrein

Debtor and Covenant

Debt is an Action at law for the recovery of Damages: Damages when the Damages are reduced to a certainty Debt will lie when the Covenant is under Seal or Single bill. If it is a Covenant with out Seal then a certain sum the Debt of Right will not lie because it is in a Covenant or writing though it survives in a Land: but where the Damages are only Incertain Debt will lie: but where a Covenant is to do some Specific act as to make a Convayance &c the most proper remedy is Debt or Covenant for every Covenant is to be performed Covenant is enforced Debt will lie, that an Action of Debt will not lie in such case: for by a general rule that a person can not obtain an Action in Chancery unless he can show an Injury where

Damages

Abr. 1089 Bac. Ab.

1 Saund. 33 116

Actions on Contracts

Assumpsit brings a bill in Chancery and cannot be by shew that damages alone could be recovered the bill cannot be retained for a court of law could do this and further Chancery can not ascertain damages and it is for this thing to do this:

Debt on bill lies only when sum demanded only can be recovered if there be less pleas in confirmation or collateral could be ground of relief for injunction in Chancery the bill cannot be retained: Chancery of matter of fact is known with the damages Chancery cannot retain the bill simple debt only less than damages only: Thing of A. owes B in Common Law action at law B sues a bill for an injunction against this and the ground of fraud. If any man sues by any bill in Chancery for a thing of which Chancery only, and if not found fraud Chancery will give damages and the bill cannot be retained for the purpose of damages

Actions on Contracts

of warranty in England an issue of land warranty to maintain the warranty of the warranty.

The practice in Pennsylvania differs from the English. Here in the first place a bond of security must be given to the warrantee to obtain a warrant for that purpose. Warrants are divided into two kinds: Common warrants & Special warrants. The former is the King's Warrant (as it is called) the latter is granted only upon particular occasions: Viz. if A. leases a tract to B for one year & B commits waste by felling timber &c. this is no forfeiture of the lease but only a trespass.

The latter are such as are granted on particular occasions. They are three in number. Viz. 1. Warrants granted to Officers & Soldiers of the late war. 2. Warrants granted [illegible]

Actions on Contracts

Covenant lies where the def. had a right to recover the Debt. Man. Dig. is no Covenant in Law Covenants in Law therefore such Law the nature and form of the Agreement.

Covenants are also either Real or Personal.

Personal Covenant properly so called by which a person binds himself to pay or Man. Dig. 139 Tenth. 343 Sh. Dig. 204 doing something or some other thing Entirement of Action in bargained Debt is a Covenant Real: and so is a Covenant of Warranty

A Covenant is called personal when the Agreement is annexed to the person & extends no further than personally only: Thus if Bond covenants to perform Deed to B: this is a personal Covenant: So if it is to pay an Acre: or if a Landlord covenant to build a House &c. This distinction is very Jacobs Dic. Cov. necessary in regard to the Object or Subject matter Bac. Abr. of the Covenant

Covenant in Deed is an inferior Species

for Land

Relating to Contracts

But to create an express Covenant no technical or precise form of words is necessary. Any words shewing the intention of the parties to the Agreement will be sufficient: and in fact the form of Covenants differ widely from each other. So provided that intention of the parties can be come at clearly & no rule of Construction of them is violated. Therefore neither the word "Covenant" or the word "Agreement" need be used for it may be by a Promise. To effect a Lease no Deed is necessary a Memorandum will suffice to it: Now this a Covenant or the Law of the Case that it should have Lease: Therefore it is a rule that any words importing an Agreement, Lease, Grant, Conveyance may amount to a Covenant.

If grant of a Lease have to Commence the Date of such Deed and that expect

Covenant

2 Burrow 1099
1 Salk. 198
2 Mod. 86
1 Vent. 10

Of Letting and Contracts

Covenant to observing so much part of Ch. law
Mem. to incorporate much part of Ch. accepted
1 Sid. 208 Lex. and Civil Covenant and the law to
Sid. pay the rent and if he may not and he
Raym. 451 shall not be liable against him: and it
Salk. 375 makes no difference whether the Deed is
sealed or by indenture
Ch. Covenant may be as to something
present past or future: generally it
is future but it may be of both
and a Covenant may be merely past as
Plowd. 308 for instance a certain act. Covenant
Sid. 358 is broken if the profits did not
answer of the future
4 Co. 80b Ch. Warrants in Law a implied Law
1 Do 1 warrants differ from Covenants in Deed.
Salk. 98 expressed Covenants in this: that Cov.
warrants in Deed are governed upon the
Salm. 358 words in the Deed that Covenants
2 Black. 30 in Law are not confined from the words
Sid. 358 used but from the nature of the Law
Ld Raym 848 Land a Covenant runs: but not so

Debtor and Creditor

Covenant or Debt lies for Rent reserved
by an Indenture in the Deed. 2 Roll. 873
Where it is a Covenant for quiet en- Cr. El. 814
joyment they should count upon 4 Co. 80 3
the Eviction ejectment or entered by a 4 Co. 54
Stranger for the Arrearages Dam. Bul.
Their Action against the Stranger 2 Vent
But if they be ejected by the Lr 2 Saund 181
or Entry of Commandy

A recital in a Deed of a former 3
agreement will create a Covenant.
Thus if in a Deed Indented it 2 Roll. 425
is said that whereas it was then agreed
between A and B that A should pay
a sum of money &c this recital cre- 3 Keb. 465
ates a Covenant for such recital 2 Roll 190
confirms the original Agreement.
Though it was void and no agree-
ment to create a Covenant yet when
a recital is in Deed it creates a

Obligation and Covenant

Covenant or Deed and Covenant in Covenant
Law: Where it is stated by the words
Deed or Covenant which imply the
Sole Covenant and then proceeds to
the performance of the Covenant and
Land will extend to both the Covenants
but whether a stipulation in the
nature of a Defeasance it can only
amount to a Covenant in Law: Where to
a Covenant to pay £ a certain sum
on Condition and proceeds to say in case
Law that Action will lie: Then this is
not a Covenant to pay £ it is a mere
defeasance: But if the Law construes
this a Covenant, it will be entered and in
the first place will be considered the Rules
as to the Construction of Covenants.

If it is a general rule that Covenants
& to continue Relationship according to
the true intent of the parties and not to
strictly as the words express: for Law
the Construction is made

Bacon Abr. Tit. Obligation (D)

Bacon Abr. Tit. Obligation (D) 2

Bacon Abr. Tit. Obligation (D) 3

Bacon Abr. Tit. Obligation (D) 4

Bacon Abr. Tit. Obligation (D) 5

Bacon Abr. Tit. Obligation (D) 6

Bacon Abr. Tit. Obligation (D) 7

Letting on Contracts

Covenant Where it is that after a Lease for
years of Lands reserved Rent the
Lessee covenants with the Lessor that he
may & can enjoy the Premises during the
Term & will pay the Rent reserved
at a certain day but after the
Lease & before the Rent reserved
Pleads it is not due at the day appointed
Ent. Off. Pay'd &c. Quere if this be a breach of the
Covenant for it was always usual to let
Dec. 3 pro. the Rent run on & to bring the Covenant
for Rent all that was intended & to draw
it is adjudged to have performed sufficiently
though not strictly in that and therefore
the Lessor did not have Cause of Action
Litera perfrumenti. If in Debt upon
Nil Dicit Covenants to leave Premises in good
Judgment repair & the Lessee pleads this
Error entered & Covenant
Warranty Error for after Lease for Life of Lessee

Action on Covenants

Declaration a quodam Will. Holcott Servant
fifty pounds Money Duties weights &
Measures Articles was entered Anno
Dom 1[illegible] Plea Non
est factum

Quarto pleas & Issue thereupon
the Covenant in the Declaration
to be taken most strongly against the Cove-
nantor and Especially for the Covenantee
they were agreed by all Parties & Will
& Testament & Executors: Further
the Defendant covenanted to pay the
Plaintiff [illegible] Annum if he lived
Seven Years Regular and there was no Limi-
tation for the continuance of the Term
it was declared that the Covenant
should Last during the life of the Cove-
nantee

In Debt upon an Exception may
assume the Covenant and the Attorney
not: This is Excepted & Sustained The
Rule is where the Law is of a Joint Stock

Covenant. except a certain part of the supposed Exception is not a Covenant: So a Grant & Release accepts a certain Lot from Lease & no Covenant on the part of the Lessee will be implied on the Grantee. But on the other hand where the Exception is of some thing in esse, precise & to be derived out of the thing demised, the exception is a Covenant. So if a Lease for Life or Years of Land except a right of Way over the Land demised, there is a Covenant on the part of the Lessee, that he will not disturb the Lessor in going over the Land. Against a Lessee who keeps & uses the Way, an Action of Covenant lies. But where the Exception is of a thing to be created out of the thing demised

Co. Lit. 47 b
Salk. 198
Mod. 53
Cro. Jac. 258
Dal. 93. pl. 9
(Pordage & Cox)
Cro. Car. 388
11 Mod. 170

But here is an important distinction between the Construction of Exceptions and implied Covenants. In the first Covenants are to be taken most strictly. Here no Covenant can be implied from Words, that do not amount to a Covenant. In the latter Covenants are to be favourably construed. Here the Law will imply Covenants from Words, that do not amount to express Covenants. Thus where one seised in Fee

of

Actions on Contracts

To perform a thing by a certain time and he must not be ready & prevented by Act of God or the law. Covenant will lie & debt shall be bound by the Covenant. But if he has given a bond and Condition that he would do the thing in certain time, and he pleads it prevented by an act of God, it will be a good plea. Because evidently he would not have liable & the penalty for there was no day appointed. The maxim Actus Dei nemini facit injuriam is strictly true & therefore if he is not able to do such thing & contract. If one Covenants absolutely to find Corn for a Horse during a certain time, and the Horse is destroyed by fire, still the Corn must pay & but during the time in which time the debt was made.

But in the case of an implied Covenant invitedly accidents will excuse the Covenantor. If I hire the use for the year

Covenant
3 Burr. 1637
3 Esp. 233
8 T. Rep. 259

3 Burr. 1637
2 Esp. 477
2 Sch. 310
" 708
1 Ventr. 361
2 Mod. 55

Covenant

indebitatus assumpsit for the water rate
mill-toll: Plea if leases ought to accompanied by the Act of Gen. a inevitable accident as by tempest &c. supplied, & no
thing ought to remain and the Covenant
broken: But as upon Covenants it is the
intention of the parties, that the Covenan-
tor shall become subject & not the Covenan-

Tenk 356
Doug 759

tee shall become subject & not the Covenan-

Rules in Particular Covenants

It is a general rule that a performance
of an express Covenant is not discharged
by any collateral matter. So agreeing
to any part void account time &c. a
tender & refusal is to be made before the time
agreed that the Covenantor is not dis-
charged: But to this rule there are some
exceptions. If [illegible] & the thing
which at the time appointed the Covenant
ought to be done [illegible] which
Covenant [illegible] the
[illegible] & the Covenant
[illegible]

Of Treaties and Contracts

The United States to whom all Treaties and Contracts made Government
with any of their Subjects before the Existence of the
Union shall be binding on them under the New Sect. 28
Constitution by which the Government is formed
(As to this rule a question has been made
Viz. Whether under the Constitution
of the United States they were bound
to and it is said the Legislature of the
United States is impowered to repeal
Treaties that the Constitution does not affect
the rule of Law and Equity in this case
Treaties are considered in the Contracts of
Nations as Laws of general policy not relating to
their Municipal Contracts which may from time
to time be repealed the obligation of the
Contract remaining unaltered by all and
Treaties which are not to do something which is not
to cease to be binding on them if the Government
is changed but if the thing to be done is a
Contract to be of force for a time & year and
not to be done during that time

and

Covenant

Covenant a subsequent Grant of more tenements
Party cannot to go into the Power of their
Covenant, and the Covenant would be void
by Surrender and the Covenant may be taken
Surrender to do an unlawful Act and is
Voluntary to do an impossible Act and in
Impossible of the same Kind. But if
Subsequent Act is to be one Act and
a subsequent Statute passed which
alters Act must avoid the Covenant the
general rule is that Covenant and cond.
Grant in opposition to the subject matter
of the which is now being at the time of
created the Covenant. In this case
must be paid to the Lord of the Service
Service then the Tenant only to avoid Law
is in Power of Lord to Service, as and in being
at the time of the execution of the Cov
ment and not to their different Time
Statute of that may be created afterwards. So if
Frauds Tenant has at the time of executing
Sections the Covenant and afterwards a Law is pass
Tenant

on plea: the defendant is bound to pay the
debt by covenant contrary to
law and your petitioner is ready and offers
verification. Cooke 341. 795. Com Dig. 184. 196
Ans to the rule that performance of any
such contract or covenant is not pleaded
by way of Defeasance. It has been
decided & ancient time & is since the enact
ment of statute 4 Jac 1 ch 4 as at any time
and that a Bond & Defeazance taken the same day
only, whether the deed must be pleaded by a
Court of Chancery: this question is not yet
settled by Authority. Both parties that
Equity can not give relief against the Bond
but the opinion is correct: It is agreed by
all that it was the Defendants intention &
the parties to have set at account, and if
it was a Court of Chancery a Court of Law
in case and relieve against: Chancery
in case will give the same relief
that a Court of Law does.

Upon the trial of personal chattels and com-

many

Covenant
37 Eliz. 8 7
2 Inst 483
37 H 8 c 9

Bl Ab. 83
Ames 619
Fraser 66
366

Forms of Conveyance

Covenant
Dec. 31
Sept 26. 44
Dec 31
Feb 29
Dec 31
Feb 29
Dec 31
Feb 29

the Lessee shall have the use of it during the term and at the end of the said term in as good a state of repair as it is now in (reasonable wear and tear only excepted) the Lessee paying for the covenant is not broken

And the assignment of a lease in order to be valid in law must be by deed according to a command by the Assignor that the Assignee shall have the benefit of the Assignment of the term to the end of the term and the Assignee accepting the same or agreeing to the Assignment by the Assignor is not necessary to the validity in order that the Assignee may have his remedy against the Assignor in Chancery for procuring the lease: But in common cases

Ejectment and Covenant

Covenant
Title 35
Do 232
Ind. 23.
Title 170
" 486
Ej. Title 446
Ind 75
Ord. Ed. 357
" Title 359

Covenant by assignees of perpetual lease of copyhold premises as a defence and may be pleaded as such: The object of this rule is to prevent a multiplicity of suits which would ultimately produce the same effect: A covenant by any person who has a legal claim against a tenant, that he will not prosecute the claim at Court of a particular jurisdiction while he enjoys the premises is void: But a covenant that he will not sue in a foreign Country is a good bar to the Action of personal property. This however is only a limited rule and not a total one: A covenant not to sue at all one of two joint and several debtors or Obligors is a bar both to the other one: Seeing if the Obligation had been joint & one grants to a Debtor that he shall not be sued before such a day nothing is to the Debtor about his entering an appearance: This is a Conditional release until a Writ have been sued out

Dim. 550-550
Ind 123.
Title 170
" 486
Title 230
Sum. 550.50.

Actions on Contracts

Of a defeasance or Conditional Release — Covenant

There are certain Covenants attending Conveyances of Covenant Assurances which deserve particular notice.

In all Deeds of conveyance except Quit claim deeds there are two Covenants 1st That the Grantor has a title of right to make conveyance. If the conveyance of freehold it is a Covenant of seisin, if it is but for Freehold, it is a covenant that the Grantor has title. 2d Covenant is here called Covenant of Warranty and in England a Covenant of quiet enjoyment. For though these Covenants may not be found alike they are in substance found the same, i.e. a quit claim and these Covenants are not contained

In a Covenant of seisin the grantor must prove before evicted, tracing his title to some to some one in whom it vested

But on Covenants of Warranty the Grantee can not sue until he has been evicted

(This

Vaughn 254
4 Coke 80
Cro. Jac. 267 S.C.
Winwood 90

Co Lit 384

Raby 3
Noke 62

Salk 199

1 301

Warranty in Covenant

Covenant
Cro Eliz 414
Cro Jac 359
Poph 82
2 Inst 275
Co Litt 384
Not Cov

Warranty is not Covenant: Tho' an Action and Form of Writ is sufficient to shew that that the Grantor may not justify and it is not necessary to shew who was Seised: Seisin or Ancestry of the Grantor is alone Matter of Warranty, but Seisin is necessary in the Grantee to shew that he was seised.

2 Inst 281
Bamford v Walham
Cro Eliz 814
Yelv 143
Dyer 366
Cro Jac 683
Yelv 143
Cro Jac 359
Poph 82

A Covenant of Seisin is broken by and executory incumbrance and land only that incumbrance is excepted: it should be absolutely excepted: The Grantee in a Covenant of Warranty must allege an eviction and that the evictor had under claiming of title and also that he has vested good and clear title: they called Branch incompetent: it has been resolved however that where it is alleged and the Seisin is alleged that the evictor of the Grantee has lawful title it is good though it be not shewed declared of it: And it is not necessary to shew what Estate [illegible]

Warranty and Covenants

Of an what measure is it necessary to give a Warranty of title, and covenant what title the conveyance purports. Covenant of Warranty does not differ much in their legal acceptation from that of another, though it is said that the existence of a deed under a claim of title may be pleaded in bar of the plaintiff's action, but not sufficient for the plaintiff's recovery. Quere and whether such deed may not be given in evidence under the general issue? But and must be specially pleaded? Quere whether the legal operation of a deed, with a general warranty does not differ from that of a deed with a covenant of warranty against the acts of particular persons only, and whether the former does not amount to a covenant against all persons claiming under the grantor? Quere whether such covenant does not extend to the title only of the grantor himself, or does it run with the land, and whether the grantee may not assign the benefit of such covenant to a subsequent purchaser? Quere whether the grantee may not assign the benefit of such covenant to a subsequent purchaser? Quere whether such covenant does not extend to the title only of the grantor himself, or does it run with the land, and whether the grantee may not assign the benefit of such covenant to a subsequent purchaser?

Covenant.
2 Bac. Ab.
2 Black. Rep.
3 Wils. 129
3 Wils. 414
3, 384
Cap. 2d 3.
Dal. 34
Co. Lit. 384
4 Co. 80
Co. Lit. 384
Co. Lit. 384
Co. Lit. 384
Co. Lit. 384
Co. Lit. 384

Covenant
Co. L. 384 302
2 Shep 445

Stat of Eliz. 39 c. 5
Dyer 237
2 Comm. 446
5 Co 54

Where a Covenant extends to any thing not in being at the time of the Covenant made, no action will lie upon the Covenant before the thing comes into being. Thus where a Covenant was made that a Lease should be made to A. for 21 years if he should so long live, A. could not bring an action upon the Covenant before the Lease was made, for it was impossible that he could have any damages for the breach of it.

1 R. Abr. 84

Shel. Case
Touch 183

It has been held that a Covenant by an Executor to grant a Lease to a Testator's assignee though it is in terms expressed to be personal, yet it is construed to extend to his assigns and all persons claiming under him. The Executor cannot convey away the Lease, nor can he take any thing out of the Covenant, nor by declining it, can he avoid it. The Covenant runs with the Land.

In Connecticut there is not established a different mode of pleading in Covenant & Debt, as in England, but the same rule is different from that of Connecticut.

In England when Covenant is brought for the breach of a Covenant in the Conveyance of Land

continued

Action on Covenant

As to the rule of damages in the case of
Warranty Mr. Swift puts the true
rule as now in England: he says
the measure is stated to be
what plaintiff have sustained. In
Connecticut the plaintiff and in Covenant
and of seisin recover the consideration
and interest the same as in England: But
on the Covenant of Warranty he recovers the
value of the land at the time of the eviction
and the damages which he may sustain
in consequence of the eviction: Hence it
has been accounted proper in Court to make
a difference between the rule of damages
in case of Covenant of seisin and that of
Covenant of Warranty.

Vide 1 Swift's Dig. 394

There is another essential difference between
the nature and validity of the two different kinds of Cov-
enants as it respects the assignee: For a Co-
venant of seisin to be assigned of the Grantee
and not maintain an Action against the
first Grantor: The reason is clear as the Co-
venant

Contracts

Relies upon Contracts

Plaintiff's claim is only alleged and breach
Plaintiff's claim is based upon breach
Contract of the terms of the written Assembly
Plaintiff's claim is based upon breach
Contract
Plaintiff's claim is based upon breach of the written Assembly
Contract
Plaintiff's claim is based upon breach of the written Assembly
Contract
Plaintiff's claim is based upon breach of the written Assembly

Actions on Contracts

and it is bound by a Covenant they Covenant
are all bound through each manner
An exception to this rule is when the
Contract is fraudulent: As in the case of
Infants and Feme Coverts, I is clear Co. Lit. 352
that the Covenants is not bound to an Plow. 310
Action at the Common Law: but the Inferior 1 Salk. 387
Courts can be given power by the Legis- Cro.
lature, however though even in these 3 Burr. 1610
Courts ought the Covenant is pleading
there is a material difference between
the duty of a person who undertakes to
perform the Covenant himself, and his
liability for a non performance by the
Covenants thereof: for the former
he binds himself personally and takes for a Breach
of the Covenant commanded by the Law 1 Burr. 383
remains liable till his dying hour

But such an exception seems never to 1 Salk. 86
be Covenanted that the Covenantor Co. Lit. 38
Covenants only for himself and his Lit. Digest
executors & covenants for himself and his Heirs Doctr. Plac.
Covenants 383

Bolton on Entails

Covenant
Dyer 338
Sir Thomas
Sir Thomas
Sir Thomas
Sir Thomas
Sir Thomas
Sir Thomas
Sir Thomas

Vetting see Contracts

Covenant See Conditions are parcel of the Grant see
Lease Rent is reserved at the time of the
Covenant executed and transfer pass
5 Coke 16. with the Land. Old deed of Covenant
A. shall run with the land if they that the
7 Coke 80 King & his grantee is covenanted
6 Co. 16 & the King passes and follows it.
" " 383 So any Covenant to pay rent issuing the
Wal. 159 land is a Covenant which runs with
Pyn. 139 the Land: for the rent is substantially an
" 193 charge issuing out of the land of
1 Salk. 198 the Land: See the other side a Cove-
3 Lev. 15 nant by the Lessee to build & make &
2 Vent. 182 erect a House on the Land, may not run
3 Rep. 21 with the Land and will not bind the As-
3 Keb. 903 signee unless he is named. This is
explained accordingly the rule is Cove-
nant runs in the Land not only Lessee &
the Assignee, so also a Grantee
is bound with the Land if it runs
to the benefit of the Grantee assigned but
it runs only with the Land at the
time

time of the executing the Covenant
so as to bind assignees to have power
to enjoy Lands conveyed thereby with
the Land, and oblige the assignee
though not named. But when the as-
signee of the Lessee is named, as by the word
Assigns, then he is bound to perform all
the Covenants, whether they respect the
Land or not: Though to bring an action
in this case the thing covenanted to be
done must be something related or re-
spected to the demised premises: other-
wise it will not bind the assignee unless
named: So if Lessee covenant to build a
House on Land which is not the demised
premises his assignee will not be bound
though named: for this Covenant does
not relate to the demised premises: but
if a Collateral Covenant be thereto
be done if collateral to the premises
can not be assigned: When the thing
is bound according to the intention
already

Covenant
3 Burr. 1604
Co. Lit. 385
Dy. 303
2 Roll. Abr. 248.
3 Burr. 1604
Roll. 234
5 Burr. 1611
Hunt. 22
Co. Lit. 384

Covenant

Action of Covenant lies only for rent incurred on Covenant broken during the possession of the Covenantee by the Covenantor

Thus 836

Bull 159

Dougl 391

3 Bos & Pul 521

5 Esp 265

2 Str 1250

Assignment

The right of action upon the breach of the covenant does not pass to the assignee unless expressly assigned

Contra

Dougl 183

Shep Touch 181

Bull N P 84

Thus 836

Cro Eliz 830

by the statute 32 Hen 8 which gives assignees of lessees the same advantages against the lessees of their lessors as the lessees themselves had against their lessors

Contra

Dougl 183

Shep Touch 181

Bull N P 84

Thus 836

Cro Eliz 830

by the statute 32 Hen 8 which gives assignees of lessees the same advantages against the lessees of their lessors as the lessees themselves had against their lessors

Contra

Dougl 183

Shep Touch 181

Bull N P 84

Thus 836

Cro Eliz 830

by the statute 32 Hen 8 which gives assignees of lessees the same advantages against the lessees of their lessors as the lessees themselves had against their lessors

Contra

Dougl 183

Shep Touch 181

Bull N P 84

Thus 836

Cro Eliz 830

by the statute 32 Hen 8 which gives assignees of lessees the same advantages against the lessees of their lessors as the lessees themselves had against their lessors

Actions on Contracts

Upon the rule of the common pleas to
the assignee pleaded specially to
produce in court a collateral
agreement between him & the bankrupt
when the assignee objected that
upon the usual plea of the general
issue and payment on that ground this
evidence did not lie

The rule of the court of the assignee
might be a good cause of action

The reason of this rule is peculiar to the
common rule where the estate is bound with
the liability is gone. So is liable in the
ground of estate through the bankrupt
on the ground of contract and estate
But if the assignee sues, assigns to a stranger
cause for the benefit of creditors
court to discover collateral agreement
cannot be admitted to be made by
the bankrupt assignee without
a part of the property divested the court
must be satisfied evidence of fraud

Notices on Covenants

Covenant. It is the nature of a Debt to be against the original debtor: In this case of a Bond of Bond. But it is different if the debt is vested of land: The assignee and representative of a deceased Grantee will not be entitled to any benefit of the estate

It may here be a question in Conveyancing whether a Grant of Covenants in any instrument between two persons bind assignees & assigns: & it is not yet settled: different cases & opinions: but I will give a few principles on which they seem to proceed

Covenants Deeds & letters to account by a letter and to pay interest on their money: but it is now settled that a Bond cannot in this way

When the legacy does not appear after the time of the Executor's having assented to it or paid it to any person: and whether the rule as to interest

to be taken

Returns of Covenants

Covenant to pay rent

Stamp on Covenant to pay rent

Stamp on Covenant to pay rent

Any Agreement for a Lease at a rent reserved

Stamp on Agreement for a Lease at a rent reserved

Any Agreement for a Lease at a fine or premium or sum in gross

Stamp on Agreement for a Lease at a fine or premium or sum in gross

Any Agreement for a Lease at a rent and also at a fine or premium or sum in gross

Stamp on Agreement for a Lease at a rent and also at a fine or premium or sum in gross

Any Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross

Stamp on Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross

Any Agreement for a Lease at a fine or premium or sum in gross and also at a rent

Stamp on Agreement for a Lease at a fine or premium or sum in gross and also at a rent

Any Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent

Stamp on Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent

Any Agreement for a Lease at a fine or premium or sum in gross and also at a rent reserved

Stamp on Agreement for a Lease at a fine or premium or sum in gross and also at a rent reserved

Any Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent reserved

Stamp on Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent reserved

Any Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent reserved

Stamp on Agreement for a Lease at a rent reserved and also at a fine or premium or sum in gross and also at a rent reserved

Actions on Covenants

and if he dies, the Executor could
sue for the money thereby brought
home, it would be the Executor
of the Lessee, because he is
entitled to the Land, like as he
could not sue for Rent, that accrued
in his own time: Quit of Covenants real in
Leases after Covenantee dead, the Heir
shall not the Executors to sue there
for: for the Land was his reference
& Heir: If the Covenant is broken in
the life time of the Covenantee his
Executor is liable for the breach, never
thought the Covenant be real: and the
reason is, the right to recover Damages
given the Covenantee accrued during
his life time: the personal State must
pay for it, and therefore
it ought now to be assigned.

The Executor of a Covenantor is liable
for a breach of Covenant, happening
in the Covenantors death.

Bro. Cov. pl. 15
Lo. 26

1 Salk. 141
Rep. 158
Le. 90
Yel. Rep. 193

Actions on Contracts

Covenant lies in debt and damages for the breach in the
Cro. J. 188 same cases where the Covenant is broken:
1 Roll. Rep. 194 but it is commonly attended with
2 Saund. 375. a Count
Cro. Jac. 381 Debt lies on a Contract of the breach may be
1 Roll. Ab. 598 had in Covenants, and this Action
Cro. Eliz. 2 may then is an accepted in the Stat.
Yelv. 23 the Covenant is performed.

If the Writing is destroyed by fire
or accident before it is delivered
to the Obligee the Obligor may
plead that circumstance, for Breach
Cro. Eliz. 319 of Covenant, for Debt on Bond
Noy 64 the Defendant may be found not Guilty
and refer'd as much in the Nature of
The Plaintiff
The Commencement of Declaration in Covenant
Cro. Eliz. 345 Setting before and after the Ancestors Death
3 Bac. Ab 3 proceeds he is summoned and if grounded
3 Bac. Ab. 27 that he has not by Deed Wherewith he
3 Keb. 378 is not bound: both these requisites must
concur to ground this Action

In Connecticut the Action is to be
brought on the Death of the Covenantor
against the Executors or Administrators
and

and not against the Heirs: in general the Covenant
Heir is not liable as such for his Ancestors Covenants: but the Land shall stand
the Heir is liable if he has assets by descent
or a Devise of Covenants by his Ancestor
shall bind him and his Heirs to
and the Heir is not liable

Particular Kinds of Covenants.

1. Covenants to save harmless.

If Covenant to save harmless against
all: the Covenantor and his which the Cov-
enantee binds himself to save the Covenan-
tee harmless all whom the Covenan-
tor is not bound by the Covenant not of another

2. Covenant of quiet enjoyment is in
the nature of a Covenant to save harmless
but is not if the obtained evicted with
Heir is bound to save Heir harmless against Disturbance
but which should accrue after assignment to the
of the other part should be unlawfully Heirs
by him and he covenanted to Heirs
be contained in a Covenant to save
harmless is broken

Action on Contract

Covenant

of the proved liability of the Covenantee to obtain damages: tho' no actual damages have been sustained: they if the Sheriff take a Covenant against Deeds, and the husband dies before the may immediately sue and the land thought to be in mesne conveyance by the Creditor; for the mesne liability is become absolute 6v. Eq. 53 1 Ves 213 1 Ch. Ca 310 by the non-performance: Now the non-performance may merely be ideal: it is constructive: the breach may be a breach of the Covenant and even intended to be so by the parties:

So also if a Surety takes a Counter bond of indemnification and the principal debtor fails to pay the Debt for which the Surety is bound the Surety may sue and recover the land: The encumbrance of the land at the time it became due was an event 3 Eden 230 6 Ves 94 Salk 85 1 Ch. Ca 30 contracted against, and this is the ground of the rule: for there can be no damage

indemnification

Actions on Contracts

This point has been decided in Connecticut both ways: The latest decision is that surrejoinder at the time is a breach of the Covenant, — Covenant. 2 Swift 56. 1 Root 507.

But if the Action will lie in this case the principal may be compelled to pay the Creditor although he has paid the money to the Surety. So it may be compelled to pay the Debt twice.

But Chauncy in this case could not be compelled to refund the money which he had received, though Mr Sewall pays he has cited no decided case as to this. Becoming that an action at law would lie to recover this money with it not been paid before which is, that in both cases the money was paid under Judgment of Court. The Indebitatus assumpsit would not lie. — if it would the principal might set aside the Judgment of Court. But when this paid there is a material distinction to be observed. — 2 Chauncy 1. 1 Root 507. 2 Swift 104.

Action on Contract

Covenant

(B) and having obliged himself to be answerable for another, takes a bond of indemnity after the liability has accrued or attached: the right of action accrues on such bond of indemnity until the time appointed for payment: Suppose A. & B. execute a bond to C. payable in one month, and after the time has elapsed the covenant is made to pay C. immediately, no recovery can be had until the time appointed for payment.

Here liability ceases and commences at the same moment if such cases where such liability is varied by a change in the circumstances of the parties: It follows then that if A. & B. execute a simple bill or note payable on demand and a Covenant to C. to pay immediately: then no cause of action accrues on the Covenant, until the bill or note is demanded: for it is by the demand of the specific circumstance: But a

Surety after due, not to be sued such a one Covenant
must be paid handsomely and if he may
not be sued maintained and retained of Comyns
Indemnity assumpsit, after he has re- 3 Wils 101
ally paid the debt for his principal 2 W.Bl. 1
but not before: He is not entitled to 1 T.R. 548
and action until he has actually paid Holt 139

If any Surety pay part that is sued
by the Creditor had he remedy for that
and but they have no pleas

But if a Surety has actually taken
a Covenant to save harmless and he
paid the Debt, he can not maintain
the Action of Indemnity Assumpsit &c
the principal's Debt: for he has a 2 Wilson
higher remedy

Of the power which the Covenantee
retains over Covenants after Assignment

In the Assignment of Choses in Action
the Assignee may in general instance be
sole after Assignment and in others not
the nature of the Assignment is not

Page

Covenant negotiable & release by the assignee is good after assignment: But if it is negotiable instrument the assignee can not, after assignment release it even at Law (Vide title Bills of Exchange)

In the former case the assignee pending his suit at controlling it. But in the latter case he may not: If a release after assignment of a reversion be made to the lessee all Covenants & yet the assignee of the reversion may recover for any breaches after assignment, for the Covenant runs with the land and is assignable since the St. 32 Hen. VIII. and according to some Authorities it may go at Common Law

But it is paid where a lease has been assigned by a deed the assignment the assignee & and action for breaches done after the assignment, a release made before that time brought. This is held in the Common Law courts is not correct and

4 Bac 797
2 Ser 906
6 Cha 503
2 Lev 101
1 Ent Ch 305

Cro Eliz 358
Cr. Cha. 36.

Acting on Contracts

The principle of law established by Comyns Dig. Action upon Contract (C) 1 is, that a release after action brought is void & fraudulent: for the right 2 Bl. Rep. 911 is attached & lies in legal 3 Burr. 1905 Cowp. 611

A general release by the Company 3 Bl. Rep. 1166 before the Contract is broken, shall 3 Burr. 1905 discharge the Company: for until the Contract is broken 4 Term Rep. there is no demand. But a release of Cowp. 611 all Contracts before the breach does 1 Co. Rep. 318 discharge the Contractor. Allyn 38.

Actions on Contracts

Covenant. Pleadings in Covenant.

Stamp. 5th & 6th Vict. 5th c. 21 & 6 Geo. 4th c. 129 s. 29

In this action of Covenant broken the declaration must always state that the Covenant is by Deed. Therefore there can be no such thing as a parol Covenant inside?

+ The Declaration in Covenant on the Deed.

But there are many unwritten Covenants agreements which are not under Seal and action on such simple Contracts must be in the case previously specified: It is a general rule that when a party declares upon a Covenant he must state a breach of it: X but there are several exceptions to the necessity of making a proper and specific distinction see title Plea & Pleas.

Returns page

Vol. 1 If the deed is lost the Plaintiff must declare upon it as lost by time & accident and cannot make a profert. Also the writing is the ground of it & in the hands of the Defendant [illegible]

Vol. 1 p. 8 — 09 — 85 — 129 — 3 Term Rep. 125 — 2 Bos. & Pul. 125 — 2 Wils. 25 — 3 Wils. 129

When the Covenant is general, pass

Actions on Contracts

assignment of the breach is given, the
divisa and the next general assignment
of the breach is in the words of the cove-
nant: they in Covenant of divers the
same covenants that he hath not done
the premises: Now it is sufficient to say
that the Covenantor has not well done &c

Another material rule is, that the
breach should be so assigned as to appear
to be clearly within the Covenant. Thus if the
lease contains not to cut away more
timber than what is necessary for re-
pairs and the Lessor should allege that he
has cut timber to the amount of 100£
they is not a good assignment for it does
not appear to the Court judicially how
much timber was cut: The plaintiff
must therefore allege that he cut unnecessa-
ry timber &c.

If the plaintiff leases a pigeon house
to the defendant & covenants to deliver
corn the defendant confines the plaintiff to the breach

Covenant.

Salk. 137. pl. 13.
2 Ld. Raym. 1176
Dyer 74
1 Lev. 175
4 Bacon Ab.
Gw Jac. 369
+ mod. cases

Gw El. 348
2 Lev. 208
Yelv. 89

Motion in Arrest of Judgment

Covenant — it was limited by the plaintiff's counsel
to one allegation that the Defendant is
guilty of said wastes, for that he
has committed waste: now the plaintiff
cannot confine his proof to the commission
of waste: (1 Rol. Abr.) the Declaration is
for not repairing the tenement during
said term, the Plaintiff is not bound to
take notice of this proviso: it is the Defendant
(we) the Defendant's business to take
notice of it: the reason why the plaintiff
is not bound to take notice of it, is that
it is a defeasance: it is a condition out
of grant by which the Defendant means
to take notice of (Cro Eliz. 816) the rule is different
where there is an exception in the body of
the Covenant: this condition, but if the
Covenant itself and is incorporated in the
body of it, the plaintiff is not to pay
Covenant and assign as breach that
which tends to defeat it and if
it did the issue after verdict would
be for

(1 Rol. Abr. 415)
(Cro. Eliz. 816)
+ vide note

Meeting at Council Room

Present the Governor, Mr Justice Wylde, Mr Justice Burnett
and Mr Justice Bell

The Minutes of the last Meeting were read and confirmed

Mr Justice Bell moved that the Council do now proceed to the consideration of the Bill intituled "An Act to amend the Law relating to Bills of Sale" which was seconded by Mr Justice Burnett and carried

The Bill was then read a second time

The Governor then moved that the Council do now resolve itself into a Committee of the whole House to consider the Bill intituled "An Act to amend the Law relating to Bills of Sale" which was seconded by Mr Justice Burnett and carried

The Council then resolved itself into a Committee of the whole House to consider the Bill intituled "An Act to amend the Law relating to Bills of Sale"

The Bill was then read clause by clause and agreed to without amendment

The Council then resumed its sitting and the Chairman reported that the Committee had gone through the Bill intituled "An Act to amend the Law relating to Bills of Sale" and had directed him to report the same to the Council without amendment

Ordered that the Bill be read a third time on Monday next

The Council then adjourned to Monday next at 11 o'clock

Pleadings on Contract

assn. assigns. That if the Covenant is to Covenant
pay 10 £ for so many ton of wood deli
vered and the breach assigns so ma
ny ton and [illegible] they is not well assigned
it ought the assignment of the breach
But if the Covenant had been to
pay at the rate of 10 £ p[er] ton then non Allegn. to
payment in the generall part of a 2 Lev. 84
plea might have been shewn
Where therein the plaintiff assigns a Salk. 618
in the first case viz. a breach for so 6 T
many ton and [illegible] so many pounds the Esp. D. p. 354
recov. and take judgment for the rest
and. When the Covenants is to
doing not precedent to his own, regular
Contend, the meer allegd performance Art. B. 7
of that act: Upon the rule of the Court
where the precedent act is to be perform 1 Saund. 83
ed by a third person: And in all the Jud. B. 7
cases the Declaration is sufficient, Cro. Eliz. 9
and can not be arrested for any 2 Wilson 307
defect in the performance of 3 T. R. 318

Action on Contract

Covenant

But where the Covenants are mutual & independent, it is not necessary for the Plaintiff to aver & perform upon the part of the Plaintiff upon any Action of Covenant brought. Though if the Covenants are to be performed before the Defendant is bound to perform his part. Stanyan 45

1 Saunders 320 note 3. 1 Wentworth Pleading 214.

Pleadings on the part of the Defendant:

Non est factum

Plea to the general form that he has not broken the Covenant this is not a proper Plea but it throws the whole matter of Law & the form upon the Plaintiff & is therefore not sanctioned by the Courts.

But would such plea be good if the Declaration concluded thus: So the Defendant has broken his Covenant

It would then form a Direct issue whether or not the Covenant is performed?

Delivery and Contract

It is laid down as a rule that where all the Covenants are affirmative it is sufficient for the defendant to plead performance generally: Mr Gould concerning this rule to be incorrect as a general one, and thinks that the most general rule is directly the reverse: how ever whether it is a general or special rule it certainly relates to those cases where the things to be done are in some measure indefinite, either in kind or circumstance &c: If A. covenants to convey to B. all his Lands, a plea of general performance is bad: (But if a Deputy Sheriff covenants to return duly deliver'd to him, a plea of general performance is good: So if he should Covenant to perform all the duties of his Office, a plea of general performance is good: The reason why general performance is not held to be a plea is to avoid prolixity

Covenant
1 Jon. 303
3 Com. Dig. 83
4 Bac. Ab. 91

3 Com. Dig. 236
4 Bac. Ab.
Cro. Eliz. 4, 9
916
1 Roll. Ab. 518
Cro. Eliz. 615

Actions on Contracts

Another rule: When the defendant has covenanted to perform & broad the civil act affirmatively he must plead performance specifically (we) performance of such act: This rule is well settled and only the broad general rule as laid down in the books is understood as explained, it is totally inconsistent with this rule: Besides it is late by been decided in the Court of Common pleas in England that a plea of performance therein had in the words of the Covenant is ill as general & concluded. The meaning is that it ought to be shown specifically how it has been performed and other than an affirmative Covenants, which are very numerous, the single general affirmance of breach in the replication is good

But where part of the Covenant is negative the defendant can not plead performance specially but he

Pleading and Evidence

must plead that he has not performed Vaughan
the acts which he covenanted not to do Dr. Eq. 282
of the Defendant pleads performance Cro. Jac. 391
generally it is bad on demurrer Lyn. 308.
and demurred to by reason of which 4 Bac. Ab. 91
of a Deed contains negative Covenants 10 Co. 73
part of which are void and the Defendant 1 Saund. 117. n. 2
not bound to take notice of them 3 Burr. 1383. 1386

But the general rule that pleading
ought to affirmative Covenants which
are made in consideration of others and

When the Covenants are in the dis- 1 Lyn. 303
junctive the Defendant may plead which of 1 Saund. 320
the two only he has performed 8 Coke 153
1 Saund. 117.
Dr. Eq. 282

If Lessee covenant to repair and
leave the Tenement in repair at the
end of the Term and the Tenement 2 Lyn. 229
is burnt during the Term by Lightning Wolf. 54
or the Defendant proves that it was 167
burnt and was prevented from repairing Cro. Car. 25
them that it may otherwise be Cont
or that the Lessor was bound to rebuild

(2)

Motions &c. Entered

Covenant

Cr. Jac. 305.
Jo. 3 Bu. 313.
4 Bac. 92.

Ho. 1 If the Covenant sue to declare
& Viet. and after plead, the Defendant may plead plenarty generally
Ho: because the Defendant must
plead to the Deed and the Deed must
be read by the Court: & Demurrer
lies & and Issue in the Defendant
may plead non est factum generally Hore
Rule specifically that the Plaintiff may
read them in Evidence & and in Bond only
the usual plea of Performance that is the
proper plea with Rubrick and Deed
How to be pleaded.

Rules to distinguish

If the Covenant or Deed is to pay Money
Cro. Eliz. 878. Cro. Jac. 305. or Tobacco or Corn &c. Debt lies
2 Vin. Abr. 4 because in the Nature of the Thing
Jo. Jac. 183 Nihil non Specialty is not good for there
Cro. Jac. 305 the Defendant must plead that he
has done the Thing Specified
and Debt lies because it is
Debt now only that the Damages

to

(Pleading and Evidence)

to aver the plaintiff shall in general Covenant.
bring (a) from things which arise
after the date; if they by plea
any particular fact circumstance to be
found the plea shall specially Lev. 271
if not good. Enjoyment must be plea- Sav. 375
ded specially and plea made 3 Lev. 4

(But if the Covenant is general to
save harmless from all suits, charges 6 Ed. 916
charges &c. and no specific made of the Sav. 374
suit it is sufficient on the Covenant for 5 Rep. 20a
the plaintiff to specify in general 3 Lev. 244
though even in this case where the de- 3 Cro. 5. 4a.
fendant (if they proceed) yet if the Cro. El. 915
Covenant sue the plaintiff shall plead Cro. Jac. 63
affirmatively he must plead new matter. 4 634

(Generally if the plead affirmatively and
does not plead new matter it is a mistake
for if true and proved to be and the
matter of the Action determines. Vaughan 44

Plead if given for the payment of money
in a certain day and the defendant

plead

Actions on Contracts

Covenant over the face of the bond, that it may be for general indebitatus Assumpsit
Bac. Ab. Debt (A) 2. but special indebitatus assumpsit cannot be
Bac. Abr. Cov. (A) 3. of the Covenant containing an Act to be
2 Roll. Abr. done by a Stranger the performance
Salk. 137. must be pleaded specially: But if the
Dicen. Pasch. 1 Geo. act were to be done by the
Gen. Dig. Debt (A) 2. Covenantor himself.

In those cases in which it is competent
Lev. 83 for the Defendant to plead Non assumpsit
Vid. 444 (which generally is a replication con-
Bac. Ab. Pleading (4 G. 4.) fining the general purport of the plea
2 Wms. 784 in bar) the Plaintiff must in such case
state a special breach.

Cro. Jac. 214 (A) Covenant in the Debet cannot
Salk. 137. 5 be pleaded in bar to an Action of Co-
Vid. 2 Ld. Ca. 278 venant in another Debet, unless the
Bac. Ab. Debt (A) 2. former be in the nature of a Defeasance
Vid. 533 to the latter: But one Covenant may
Salk. 136 be pleaded in bar to an Action of
Cro. Jac. 5 Covenant in the same Debet though
Bac. Ab. Debt (A) 2. there are two several Breaches and the

reason

Petition on Contract

Reason is that the Contravening of the Covenant
Deed is to be gathered from the whole 6 Rep. 75
Instrument 8 Rep. 48

Joint and Joint and Several Covenants.

The rule is the same both to Joint & Joint and several Promises, Bonds &c.

A Joint Contract is one Contract by which two or more persons are bound jointly and severally.

A Joint and Several Contract is one by which two or more persons are bound jointly and severally.

A Several Contract is one by which an individual binds himself alone.

It is a rule that if three persons covenant jointly and severally and sue by the Name together either may sue severally or jointly at the election of each. But when there are two of the same in one declaration both must be joined

July

Relations of Contract

Covenant — They seem to be either joint or several and not joint and several. But if the
Sect. 393 — Covenant is joint and several the Covenantees
Chan. 93 — [illegible] must be sued together.
If on the other hand there are two or
2 Rep. 20a — more joint Covenantees Obligees or Promisees not parties to the Suit they
Cro. Eliz. 146 — may not join in the Suit. They
2 Co. 18 a 18b — must be [illegible]. But if
one of two joint Covenantees or Obligees is
dead the Executor may not join in the
1 Saund. 291 — Suit with the surviving Covenantee.
1 Saund. 153 — The right of action survives to the
Cro. Eliz. 445 — surviving Covenantee through the decease
after Action the Covenant is with two joint
Covenantees in favor each and both a
defeasable Action and in favor only the
last dies. Several is they though the
2 Co. 18 — Covenant is in favor joint and several
Chan. 93 — yet if the Interest of the Covenantee appears to be joint all must join
[illegible] (But in the case of the Executor of
the Covenantee [illegible] to be several
each

each may be severally: so if A Covenant
enfeoffs Black Acre to B and White Acre 5 Coke 18
to C and the like covenants Pl. 4. 8
both of them. Yet their interest is Joint 9 Ed. 3. P. 17
and so each joined and severally 14 Assiz. 153

From the distinction already taken it is known that though two or more
be obliged or severally they may bring
their several actions for the same cause
yet two several Executors cannot
have two debts and several actions 5 Coke 19
unless it be made a grant to B and C.
jointly and severally: the word severally
is totally inoperative: it is a joint Cove-
nant: they can not take severally un-
less the Deed divide the land and se- 5 Coke 19
verally which belongs to B and which to
C: If two persons covenant jointly and
severally, each may be sued and sub-
jected alone for the neglect or default
of the other though the one find his term
jointly if no neglect: for each severally 5 Rep. 303
for

Covenant for each covenantor for the other, as well as for himself. And where persons bind themselves jointly and severally, a release by of recourse against and by one bar to an action against the other:

(Note if one has been sued and has engaged in defence he cannot bring suit for the debt has been satisfied: if there has been a satisfaction this will bar the action: (Note one of two joint Covenantors dies his Executor is not liable to the Covenantee otherwise if the Covenant is joint and several

(Note the words in a joint and several Covenant are disjunctive & may be construed to be joint and several Covenant: So if the Covenant is joint or severally the word or is construed to mean and: If bound heirs and bound jointly and severally and one of them is sued the action to be stayed till the obligation is

Letting and Contracts

Law of release as to the whole (c.)
as to all the obligors: Plea in Bar
cong: it is a release as to any as it re-
leases the Obligee substantially, but
not as to his Executors and Legatees
1 Inst. 232. 10. Mod. 393.

If an Instrument begins with the words
"Be it remembered" and is signed
by one only, it is his sole obligation and
may be filed as such. And if the In-
strument recites it is and is accord-
ingly made only, and he signs it, the In-
strument must run it and he and not
that it was executed the Instrument

If Lands under it to be conveyed
made that if they or any part thereof
Covenant to settle it are Contract as
if a Land sale & that Intent. that
if any part thereof comes to that effect and
that when both it is Parlance and
Lands to be given a Covenant may
enforce as to the Land.

Bonnant
1 Jo. 262
Salk 940
2 Vin 234
Ld 160

1 Bac 393
2 Bl. Rep. 1191

2 Bac 393
2 Bl. Rep. 31

1 Bl. Rep. 97
3 Bac Ab.
3 Bac Ab.
Cases

Actions and Contracts

Bonyeaut Of a Bonyeaut [illegible] dated [illegible] [illegible]
[illegible] begins with the words "A Bonyeaut &c"
[illegible] and ends "Signed & sealed in presence of"
[illegible] and ends "Signed & sealed"
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Action on Contract

assumpsit and counts on an implied assumpsit
& assumpsit in consideration, concealment
trust trespass and trover. The action
for an injury may sue into William Penn
Esqr and take it by name [illegible] after
his death and after him his executors
&c, for the entry made for the commen-
dum and intermediate profits may
many had and recovered by this exe-
cutor or agent. where money is taken
& wrongfully trespass vi et armis and
assumpsit. If money be taken by fraud
an action may lie for the fraud alone in
lieu of assumpsit. There are many
cases in which implied assumpsit
will not lie: Where the circum-
stances taken together is the only ac-
tion. E.G. Where settlement Laws of
[illegible] the [illegible] Case to recover the
wages and settlement it cannot be con-
sidered in implied assumpsit. So in
the case of an infant or [illegible]

Actions on Contracts

Chapt. 1. The ancient generality of the rules
for the making of another into our
debt in good conscience, natural & civil: Ho
I say, but it receives divers qualifica-
tions. Where remedy is in the Court of
Equity which by right ought not in foro con-
scientiæ to subsist, is subject unto the
grounds & principles of policy & use to
prevent it. E.g. Money lent at a Gam-
ing table ought not to be recovered back
on a principle of policy. The nature
of Implication admitteth, is similar to
a Bill in Equity, the actions upon
which matters may be entertained in
the Chancery ought to be entertained here:
This action lies for money had & rec-
ived or received. Formerly it was usual
for to go into Chancery: to recover
money owed upon account upon the
same reason now both the real & perso-
nal Courts: and it was taken for
granted this action lay to recover it back

Chapt. 2. This action lies

Actions on Contracts

Debt lies for money paid by mistake or for money received by another which in equity & good conscience the latter ought not to retain. Assumpsit lies for money had & received to the use of the plaintiff. Where money is paid by a stranger to the use of another, and before the plaintiff has obtained any benefit from it, the money is paid back, assumpsit lies to recover it back. This action lies to recover money paid under a void authority. If A. owes B. a sum of money, B. cannot bring an action of assumpsit against A.'s name, and on that ground recover. If A. gives B. his bond to pay the money to him or his order, B. cannot bring debt on the bond, for A. must pay the money to the person who is entitled to receive it, & B. is not entitled to receive it: from B. the money cannot be recovered, for it is not to be found: therefore the action is the proper one for B. to bring.

Assumpsit

1 Wils. 232

Pac. 64

Actions on Contracts

Agent &c. When an agent becomes answerable for the principal, and pays it over to the principal, he has the right generally to recover the amount back upon demand, unless upon the ground that the principal has been guilty of fraud in the transaction. But where the authority is abused, you may recover money out of the hands of the principal. Here, however, the question arises, what is a fraud upon authority? Authority, in this respect, does not mean the power given to the agent, but the authority is fraudulently exercised, when the agent, in the exercise of his authority, departs from the instructions given to him by the principal. Where a power is given to do a thing, and the agent does that thing, but does it in a manner not authorized by the principal, the principal is bound by the act of the agent, although he has not pursued the instructions given to him by the principal. The principal is bound by the acts of his agent, although he has not pursued the instructions given to him by the principal. The principal is bound by the acts of his agent, although he has not pursued the instructions given to him by the principal.

Action on Contract

Actions on Contract

Assumpsit

Agent for buying goods paid it out of his own pocket the agent is not liable but the principal or any person employed by either may be joined to the principal for payment.

Assumpsit lies on Bills either Check or Inland & Foreign bills the Payee may give in Warranty or an Assignment to become the money of the Payee in order to become the property of the Holder thereby is the Action. If the Drawee accepts a bill and then finds he cannot make a payment and then finds the Drawer is insolvent in such case the Drawee may bring Assumpsit for the Drawer but cannot [illegible] he can not prevent any money there for the Drawer but may bring it for Drawer who cannot be the same but payment is not to him

Assumpsit lies on Bills

1 Bur. 452

1 T. R. 338

Sales in Bankruptcy

Bankrupt is to be examined previous to the sale and the Assignees

Sales at Auction

Sales at Auction. The Bankrupt is to be present at the sale, and the Assignees may at any time of the day after sale and before the Conveyance is executed, and if they see cause, bring an action against the purchaser for a less sum than the full value, the Assignees obtain a verdict for the deficiency

N. Trade

and bound to make up the deficiency. But when the Bankrupt is entitled to his Certificate, he cannot attend to his business and procure Assignees to be chosen and if he is present, or Choose a new Assignee. If a Sale by Auction is to be public notice and bills must be given

Singular cases in transfer in the Assignees

Bills

Sale by Auction. The Bankrupt is to be present at the sale and the Assignees may bring an action against the purchaser for the deficiency. But when the Bankrupt is present at the sale, he cannot bring an action against the purchaser

Action on Contract

it is not necessary that Notice should be given: If there is no impediment to taking it it is necessary to obtain it. Hence therefore if goods which ought to be delivered are not delivered or where there is an impediment to him taking it: Sometimes the Buyer is obliged to deliver out that if he fail and the damage cannot be proved how such loss or damage. Sometimes the action will lie in favour of the Seller against the Buyer: If a proved sale is an actual and permanent; to be made at a certain future day the property is altered: If it were stated that a Bond was at a certain day, he may pursue before the Warrant is executed. If the Seller after he is obliged pursue a default and tender he does to forgive the agreement the goods are taken again and the Buyer are bound and action to recover the damages

Default

Actions on Contracts

Compl. 3d

Articles of Contract

Action on Bond

the other day: But on
knowledge of the Plaintiff's
legal ones was to be taken of the thing
itself: that not pleasant Reasons from
reasons in the nature of legal ones
[illegible] of one year to be [illegible]
[illegible] Bond [illegible]
[illegible] [illegible]
[illegible]
[illegible]
[

Defendant to his Petition
[illegible]

Plaintiff This is a good defence in
the case where there is a Debt
due to be performed Terms which
uncertain depending upon the Judg-
ment of Jurors & not ascertaining the
damages ensued: but in our Defence
as in the case of Assault and Battery.
But if William Davis hath wrote
a Bond to John Davis of 40£ to main-
tain: In which Bond engages to build
a Barn for Davis: And Davis refuses to let
him: this Bond is good: The Debt
must first be ascertained in Court &
for it did arise within the province
& the parties in it were Residents
[illegible] Bond is a good plea if it was
to be performed by some time
[illegible] Bond if it was to be
[illegible]

Defence to the action on Contract.

Offer is agreed from one party to a Contract to enter into a contract from forward. The tender is not good unless the whole price to be tendered for a vessel is actually brought & offered to be delivered then & there, the tender is good. The law only requires the whole sum. Conditions as to be paid in money made at other times, in other certain articles. If the sale is to be paid in one way in other articles at the election of the tenderer tender of either is good but if at the election of the tenderee, the tenderer must go prepared to pay money if to be tendered in certain articles, what money is to be tendered? The answer is that money which is current good by law. Bank notes are not good tender & make change but may be if agreed on. Bank notes of the United States is good tender unless by the provisions of

Leander

Gregg

Debtors & the action on a retainer
of change. Creditors: the law if after
a certain number determinate a bona
fides of the plaintiff in the
place where & prohibit the person
resident in England that it give and
furnish to the clerk of such court
where any writ or process shall
happen to be awarded out of the
said court, that if any person
or persons shall counterfeit the handwriting
of any the persons authorized
& required by the said act to
subscribe their names to certificates
aforesaid or shall utter or publish
as true any such certificate knowing
the same to be forged, that
every such offender shall be
adjudged guilty of felony without
benefit of clergy & shall suffer
death as in cases of felony without
benefit of clergy: & whereas
it is expedient that provision
should be made for the more
easy & speedy recovery of debts
due to persons residing in
Great Britain from persons
residing in the United States
of America & vice versa: be it
therefore enacted by the King's
most excellent Majesty by and
with the advice & consent of the
Lords spiritual & temporal &
commons in this present parliament
assembled & by the authority
of the same that from

Issues to this Petition

The effect of a Tender

Tender

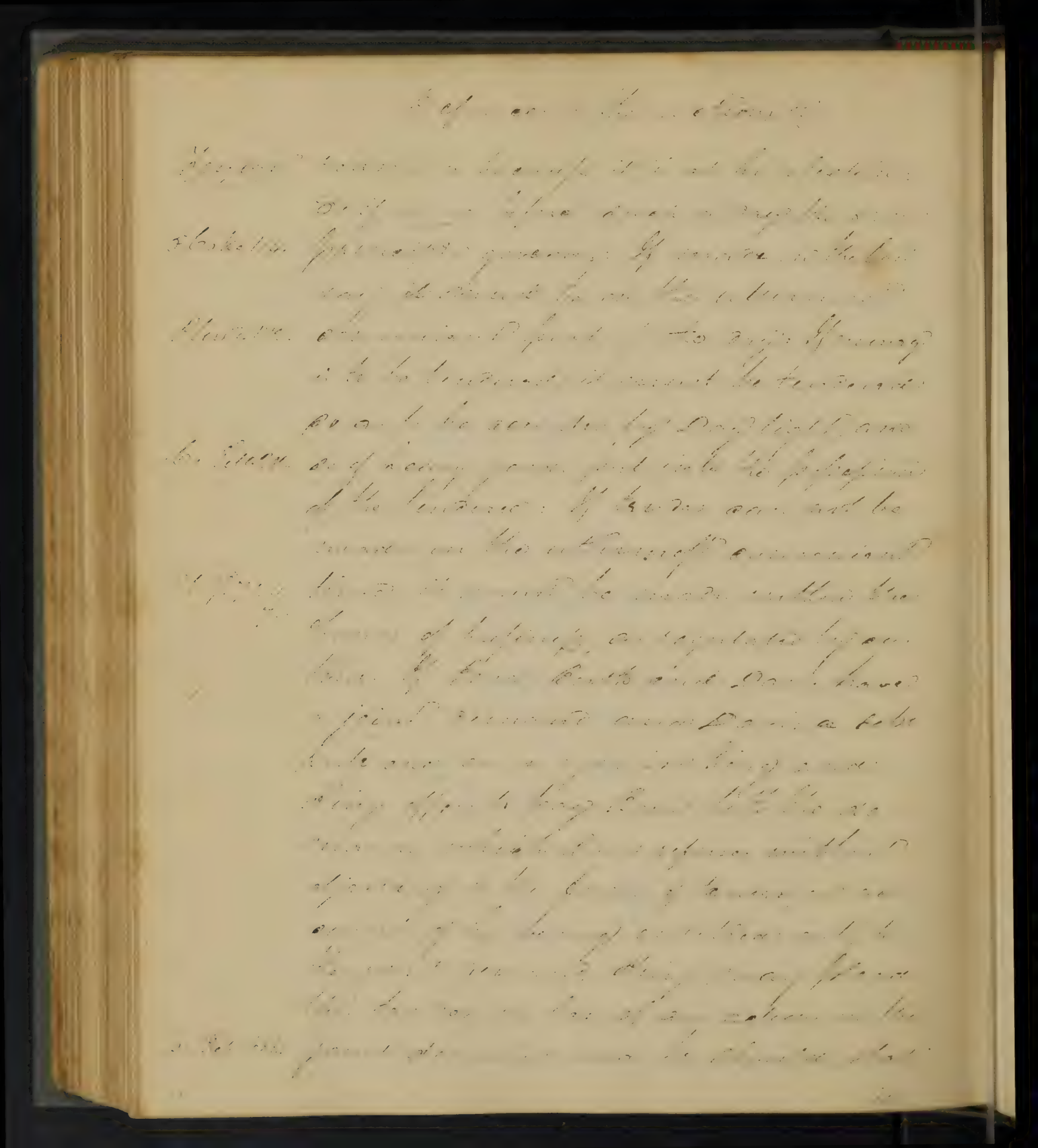
The effect of a tender is different in different cases. Generally it discharges the Debt in Duty and in Action only the Damages: In all cases where a Sum is certain tender discharges it: E.G. A Mortgage of land: Tender before Breach at the Time of the Breach discharges the Land. Whenever Money is due and to be rendered a Tender of it at the Time discharges the Debt in Deed: E.G. A Bond to deliver Corn at A. etc: Tender of the Corn discharges the Debt. The Tenderor is not bound to take care of the Corn he tendered but may go: But in a Penal Action and personal Tender only discharges the Damages. But in all Duty by Statute and Action Debt or Duty &c after the Tender the Tenderee becomes Debtor. So there is a Liability on the Debt for Interest. He is not bound to demand

Defendant's Exceptions

Tender

[illegible] judgment
in his favour if he can prove
[illegible] tender he has ever
[illegible] to the Plaintiff
[illegible] ready and willing
[illegible] the Plaintiff
[illegible] possible that
[illegible] ready to pay
[illegible] if he had
[illegible] if he was
[illegible] ready to pay
[illegible] Plaintiff
[illegible] Defendant
[illegible] Plaintiff
[illegible] Defendant
[illegible] Plaintiff
[illegible] Defendant

Defence of the Colony &c.

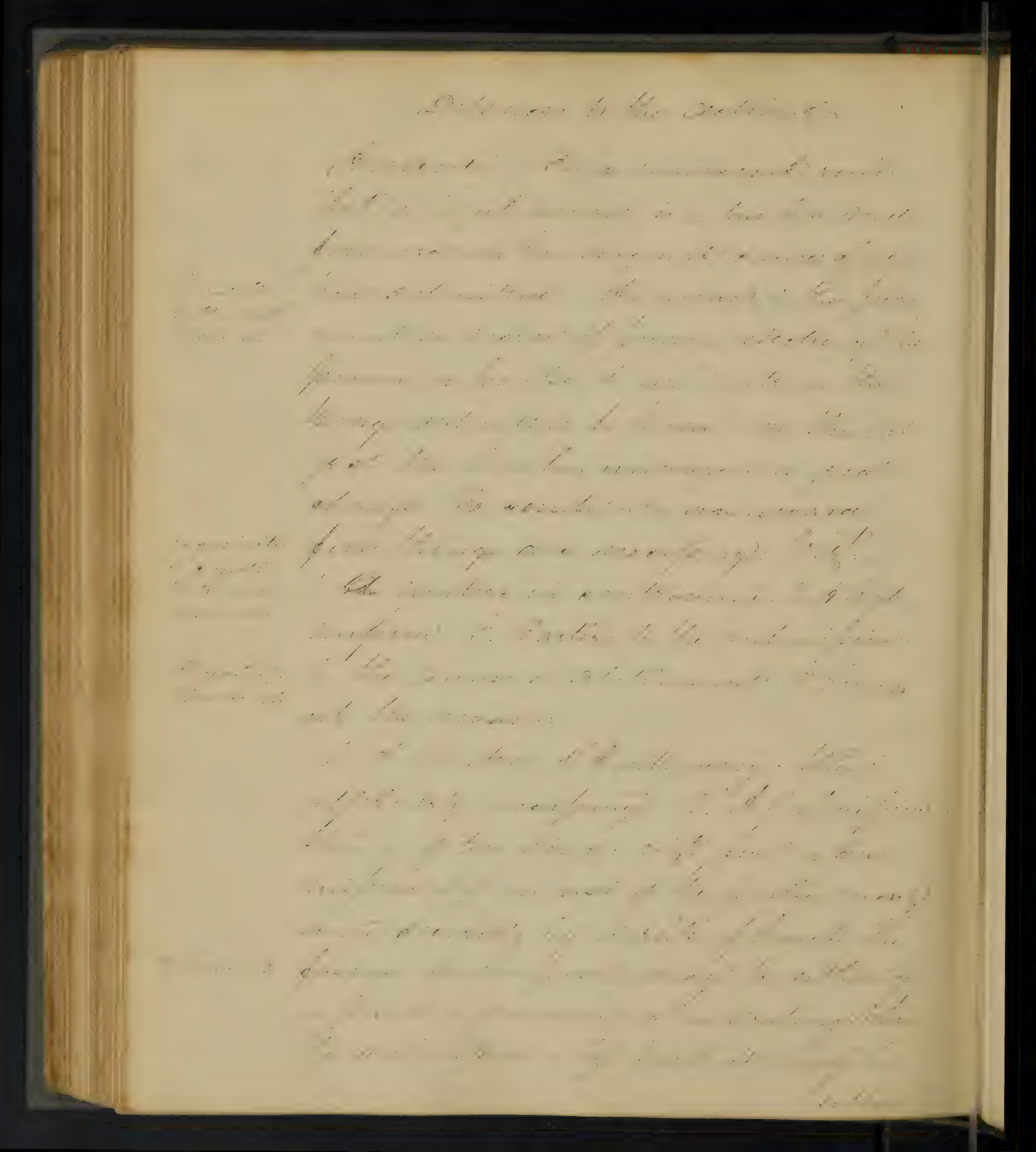


Defendants to the action &c.

Damages to the amount of three thousand
one hundred & sixty pounds (£3160) whereof
five pounds (£5) parcel thereof and
costs against the County. The
damages belong to the Plaintiff and
a Verdict is given for the Defendants
Defendants are not fined three pence
parcel &c to be paid and levied &c
and Defendants go thereof without day
plaintiff in mercy and costs to be
taxed by the Prothonotary.

Verdict
for
Plaintiff
Damages
£3160
Costs
£5

Verdict
for
Defendants
on
Plea



Defence to the action &c.

Defence to the Action, &c.

Defence to the action.

Damages

Lord the Queen general traverse
of debt due to be against the Defen-
dant for goods sold and delivered and
Account stated by the latter through mere
inadvertence can be brought

Pleas

What things are to be submitted
to Arbitration. Ale for merchandise
wine things which the Arbitrators ought
also to do after the matters have been
referred to them Arbitrators are not
to be punished by Arbitrators
to be paid by the parties for their
time and trouble if they agree
to them. The attorneys bill may
be taxed by the Court and
if not paid may be sued
for. Arbitrators cannot be
compelled to give evidence
as to what has been transacted
in their Court. Arbitrators
cannot be challenged
Award what things are to be
stated in the award. The
award must be certain
and must be made within

What may be submitted to Arbitration

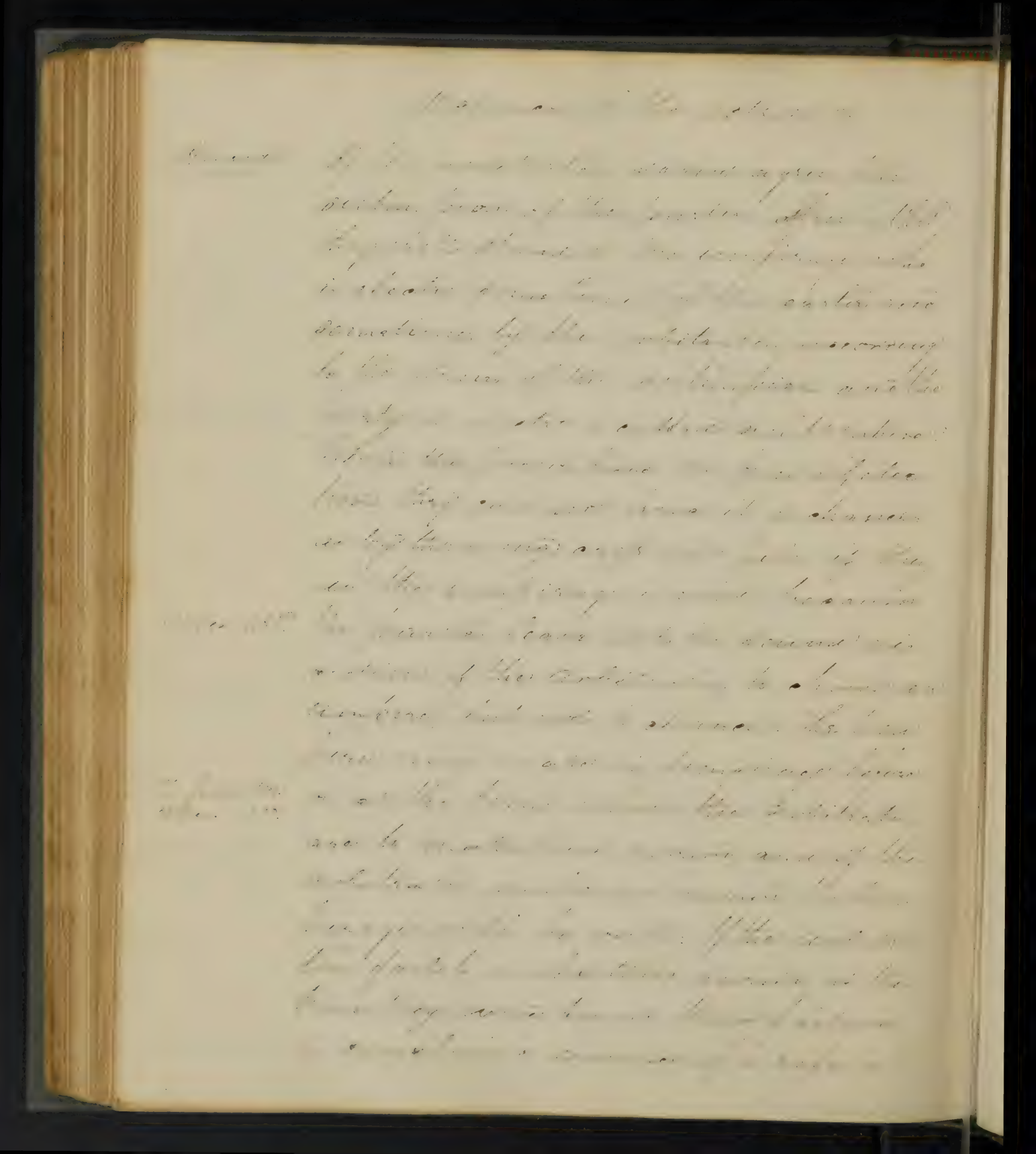
Power of Arbitrators

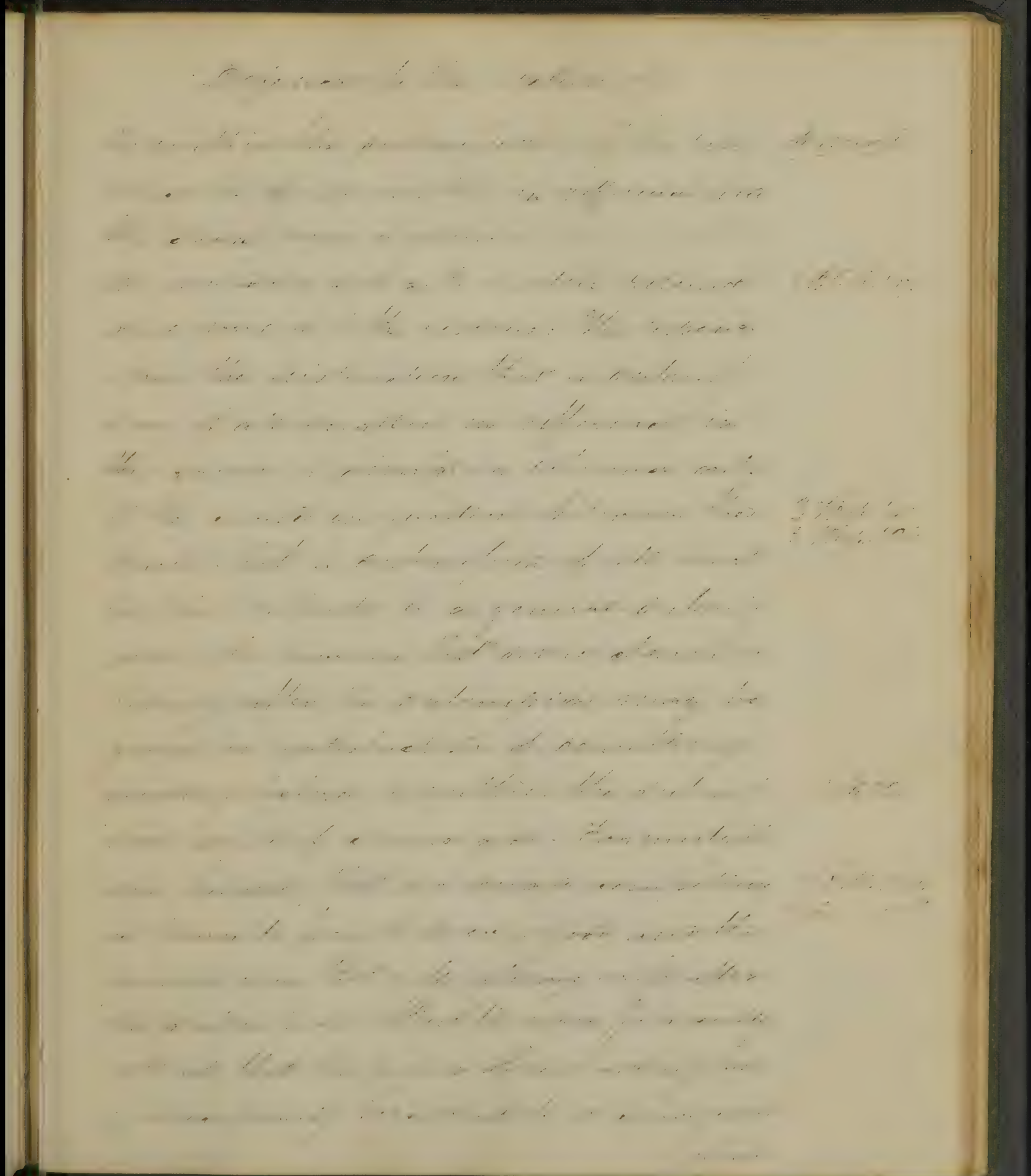
Fees of Arbitrators

Award

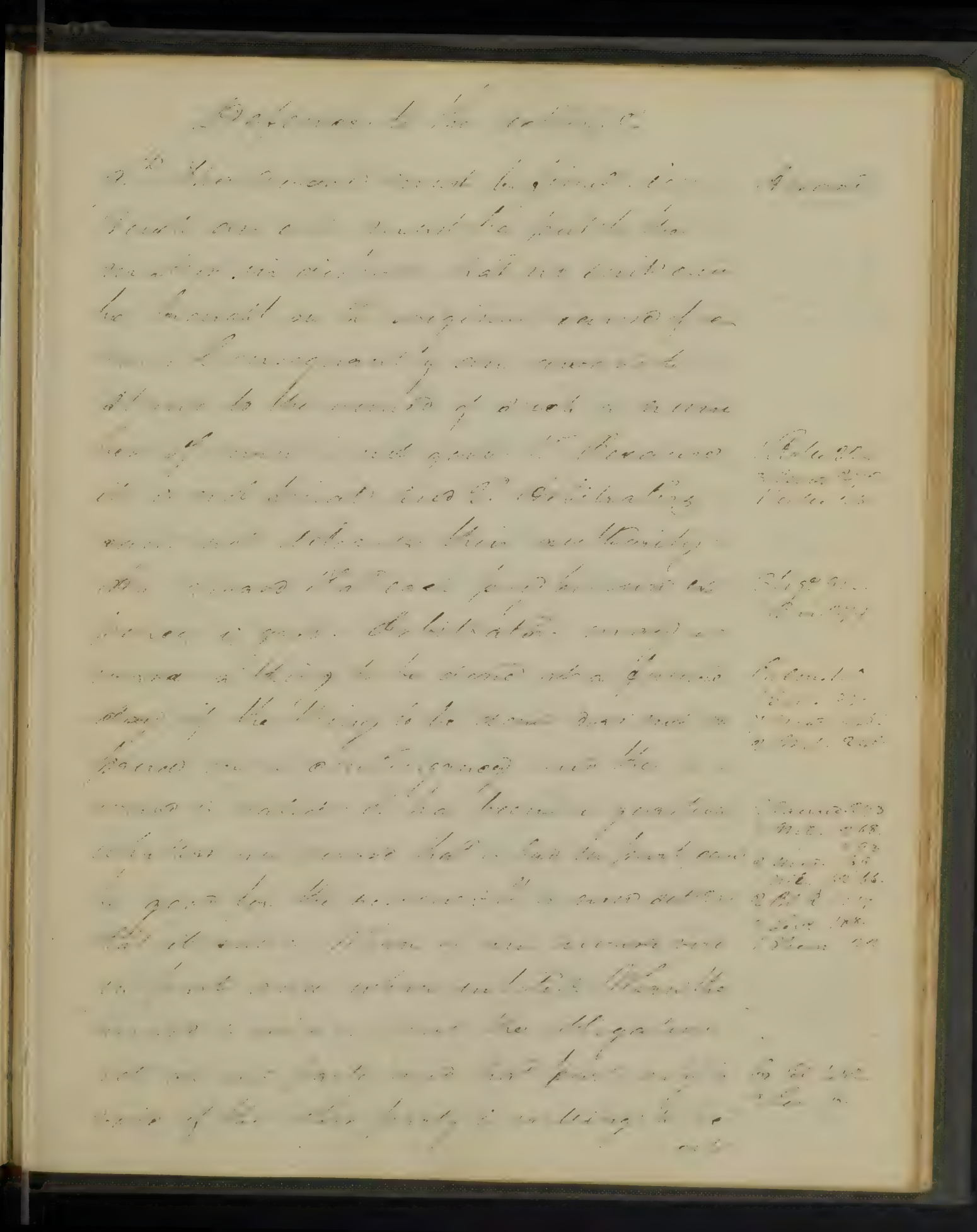
Costs

and

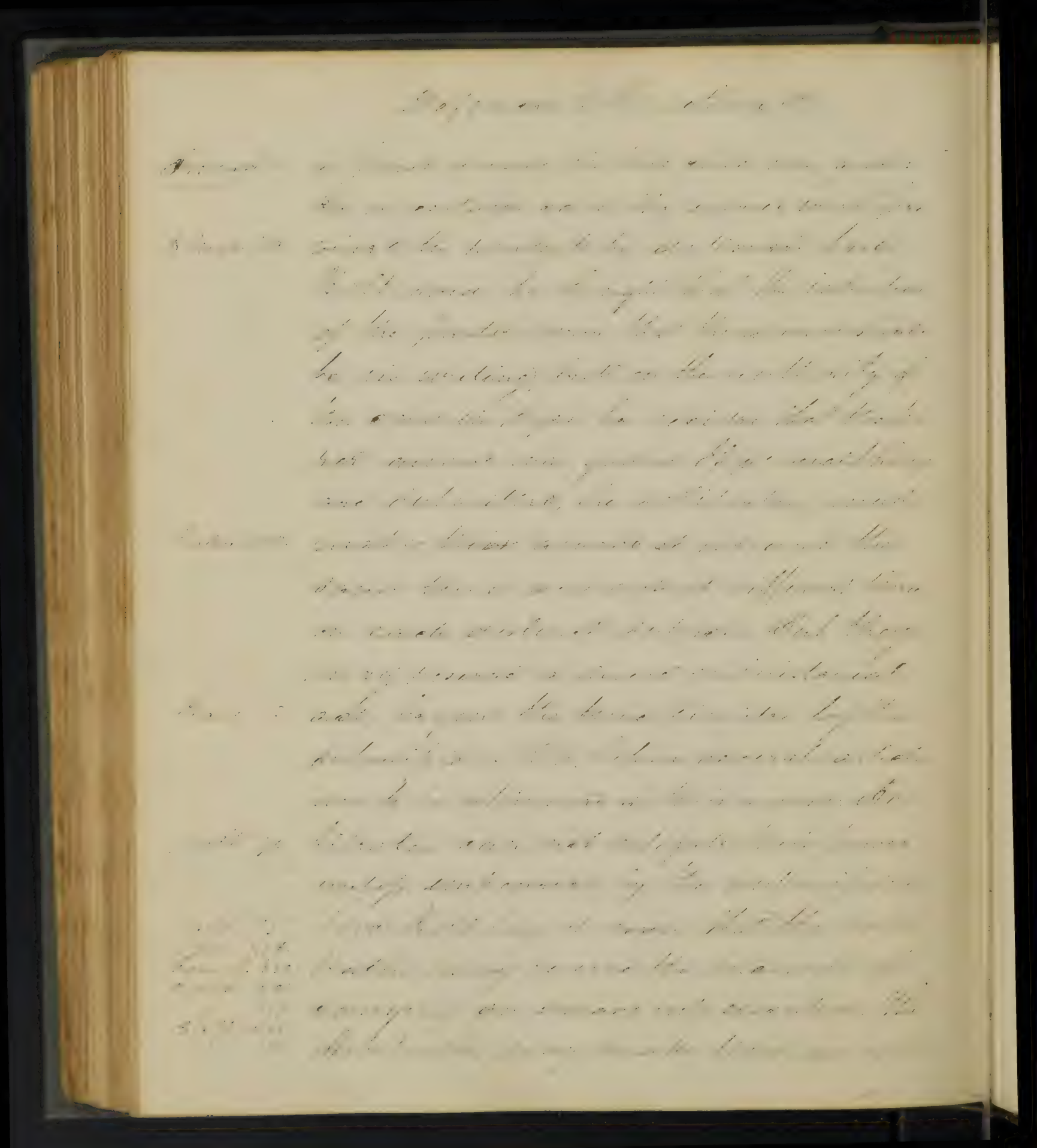


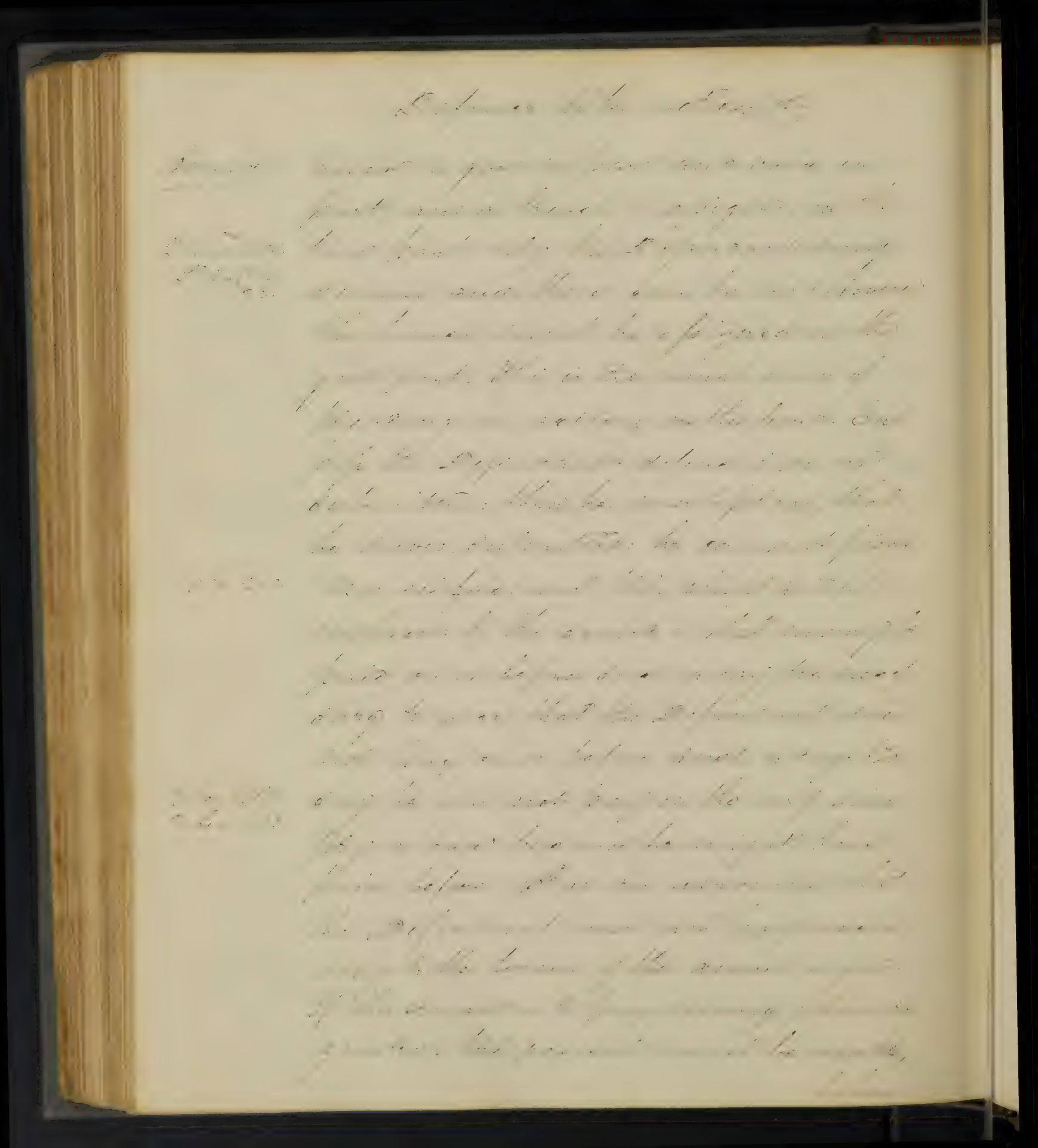


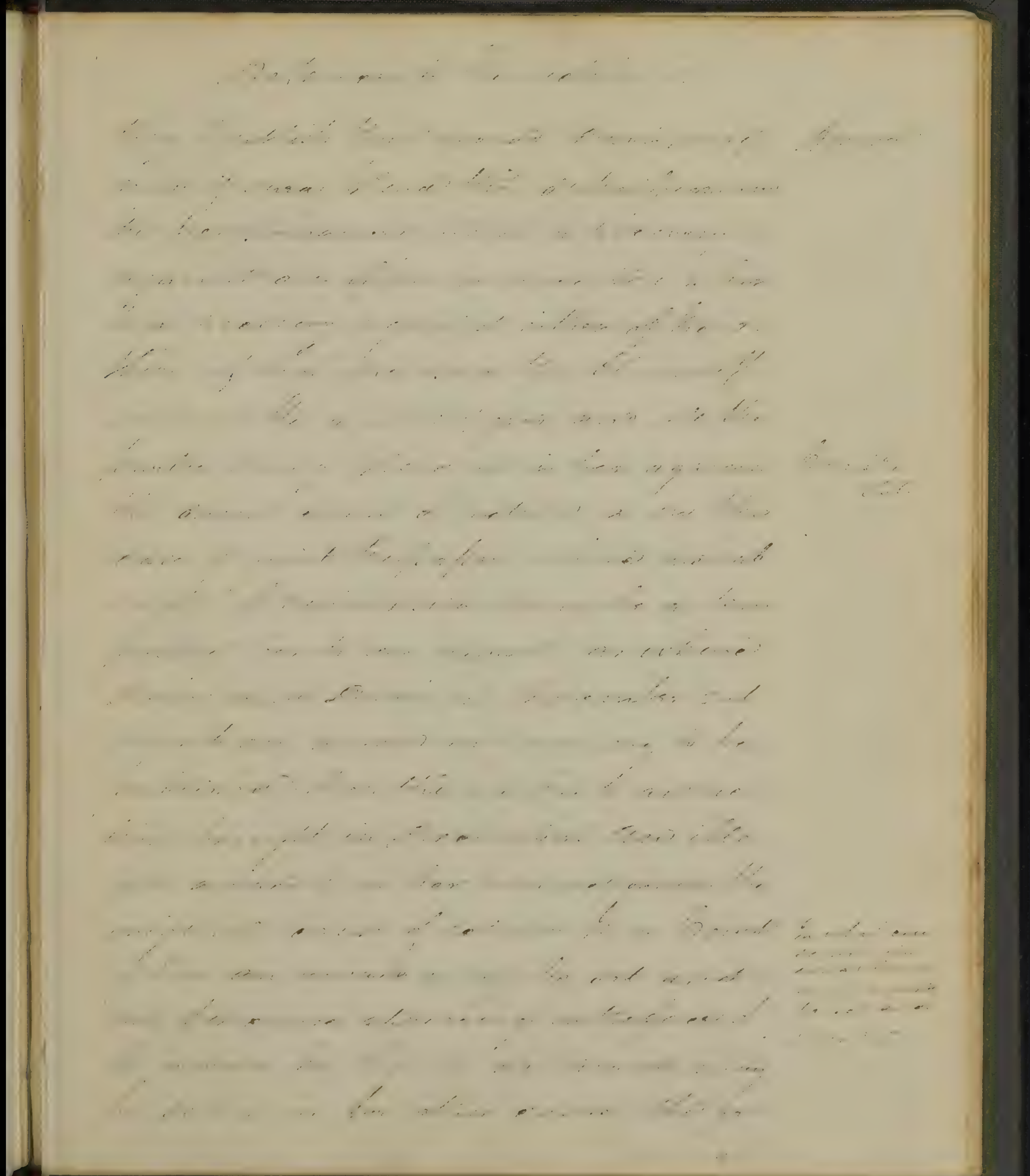
Defences to the return &c.

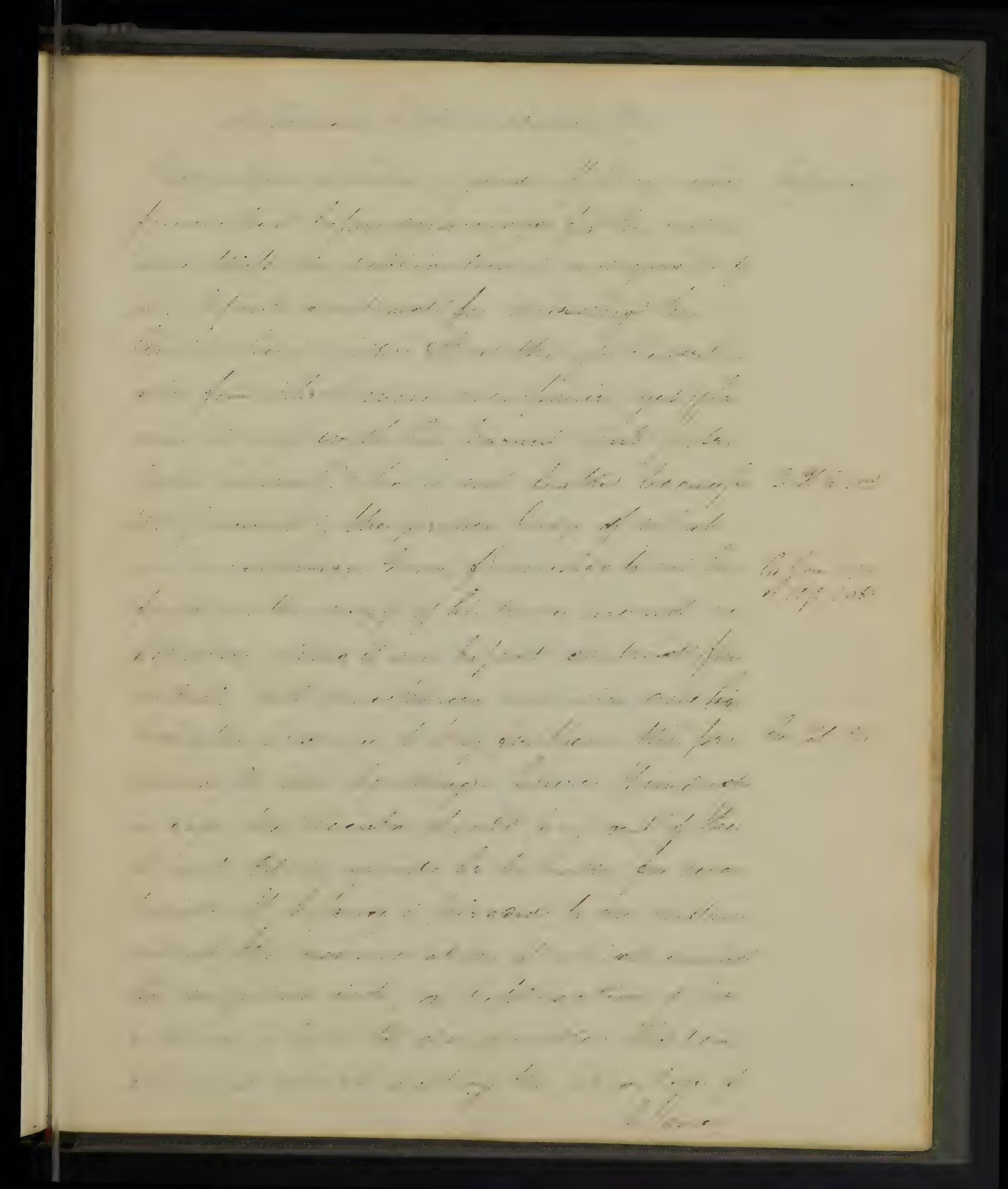


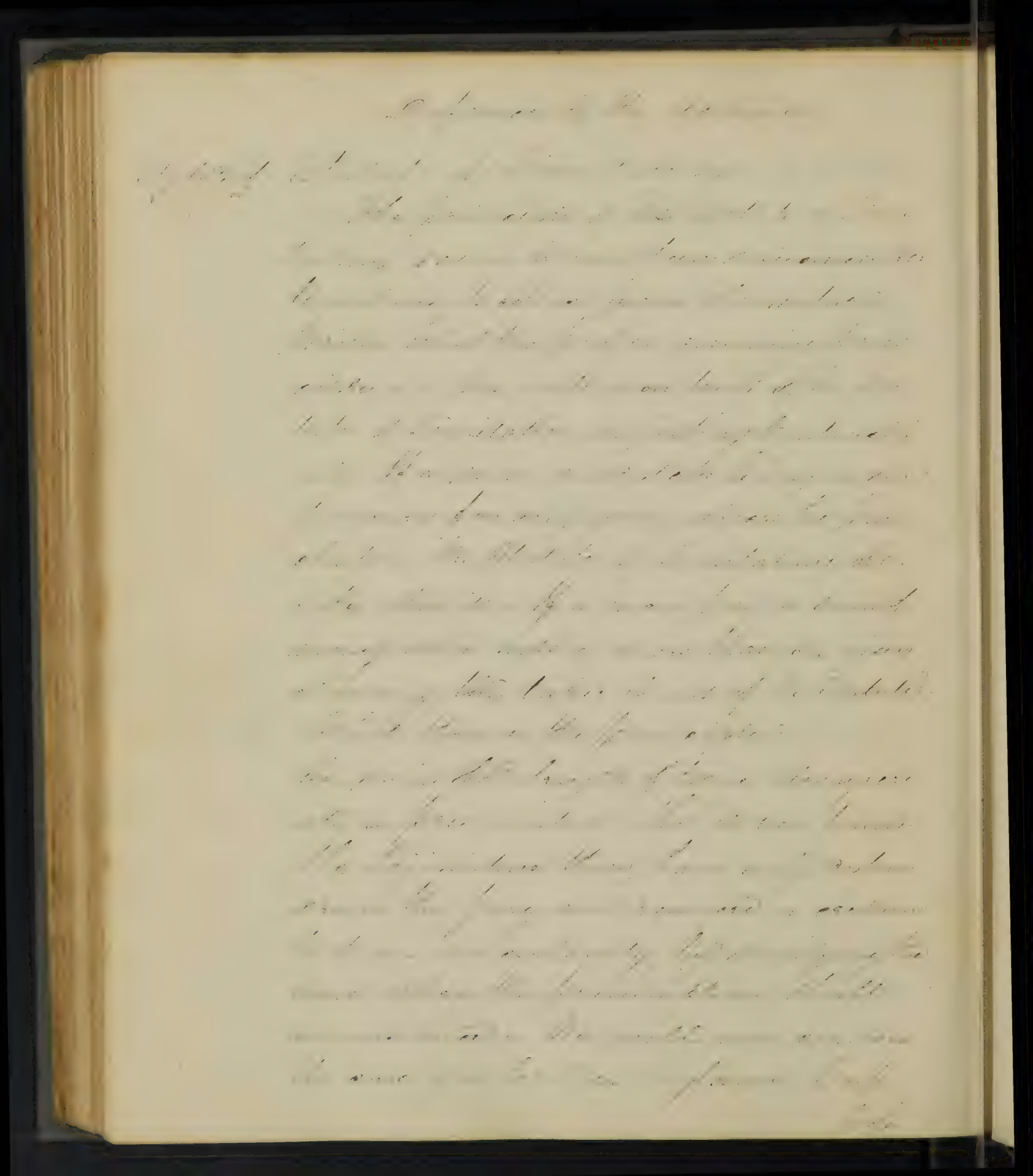
Reference to the Notes











Cl. cont.
Debt

Debt. If a part of the
Debt is barred and part not by
the Statute and there is a promise
to pay the whole debt the part
of the debt which is barred by
the Statute is revived by
such promise

Sec. 9

Sec. 9 If the cause of action accrue
immediately upon the act done the
Statute may be plead but if the
cause of

Bond of Indemnity

Bond to
Indemnify
Sheriff

Reeve
and
Goulds
Lectures

W. Bond

II